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Supreme Court, U.S.

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No. ____

In the

Supreme Court of the United States

PAUL SIMS,

Petitioner,

v.

SUSAN K. SCLOTT, et al. and IMOGENE KELLY, et al.,

Respondents.

On Petition for Writ of Certiorari to the District Court of Appeal First District, State of Florida

PETITION FOR WRIT OF CERTIORARI

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May 14, 2010

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QUESTIONS PRESENTED

I. Whether Florida's Okaloosa County Circuit Court and First District Court of Appeal violated Petitioner's constitutional rights to due process, equal protection, and to not be subjected to cruel and unusual punishment when those court systems imprisoned Petitioner for civil contempt and coerced Petitioner to surrender his property without due process.

II. Whether Florida's First District Court of Appeal has an affirmative duty under the United States Constitution to define the meaning of its own "per curiam affirm" decision and the "law of the case" when the trial judges involved in trial proceedings were materially confused about the meaning of the order being enforced and where those trial judges imprisoned Petitioner, effectively confiscated all his property, and denied Petitioner a trial on the merits to a jury of his peers.

PARTIES TO THE PROCEEDING

Petitioner is Paul Sims, the 90-year old former trustee of the Mattie Kelly Trusts who was removed as trustee by the Circuit Court of Okaloosa County, Florida in 2004, imprisoned by that Court for civil contempt in 2007, and adjudged as having a financial liability to the Mattie Kelly Trust for a sum in excess of seven million dollars in 2008, all without having a trial on the merits and where Plaintiffs at the trial court level admitted that the Mattie Kelly Trusts had suffered no losses as a result of Paul Sims activities as the Trustee of the Mattie Kelly Trusts.

Respondent is the First District Court of Appeal for the State of Florida. This Court issued two per curiam affirmations of a series of trial court orders over a nine-year trial court history.

Respondents Imogene Kelly, Kent E. Amos, Cheryl Hellums, Susan K. Schlott, C. Lee Kelly, Carmera Kelly, and Mary T. Keogh are the beneficiaries of the Mattie Kelly Trusts and are the Plaintiffs who claimed Petitioner breached his fiduciary duties as Trustee of the Mattie Kelly Trusts and who sought the civil contempt citation.

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II. Florida trial and appellate courts overstepped their authorities when they imprisoned Petitioner and confiscated his property without due process of law. The Florida court system needs this Court's guidance to remind them that there are constitutional protections guaranteed in the Bill of Rights which the Petitioner must be afforded. 28

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Paul Sims respectfully petitions for a writ of certiorari to review the judgment of the State of Florida's First District Court of Appeal.

OPINIONS BELOW

The opinion of the First District Court of Appeal appears at Appendix A to the petition and may be found at *Sims v. Schlott*, 2009 WL 3838564, 1 or 22 So.3d 75 [Table] (Fla. 1st DCA 2009), where the opinion, in its entirety, states: "PER CURIAM AFFIRMED." After the First DCA entered this order, Petitioner filed his motion for a rehearing or, in the alternative, for a written opinion. The First DCA denied this motion on December 15, 2009. *See*, Order of the Court dated December 15, 2009, attached hereto as Appendix J, or 23 So.3d 716 [Table] (Fla. 1st DCA 2009). Material trial court orders before the First District Court of Appeal are attached as: Appendix B – Final Judgment dated August 29, 2008 (Circuit Judge Nobles); Appendix C – Order on Plaintiffs' Motion in Limine dated August 29, 2008 (Judge Nobles); Appendix D – Order Striking Pleadings dated December 3, 2007 (Circuit Judge Bell); Appendix E – Order Providing Purge and Release dated August 7, 2007 (Judge Bell); Appendix F – Order on Defendant's Amended Motion for Emergency Stay and Motion to Permit Additional Property to Satisfy Purge Provision dated August 7, 2007 (Judge Bell); Appendix G – Amended Order of Commitment, In the Circuit Court In and For Okaloosa County, Florida (filed June 4, 2007); Appendix H – Order Adjudging Contempt dated May 24, 2007 (Judge Bell); Appendix I – Amended Order Removing Trustee Paul Sims and Appointing

Successor Trustees (Circuit Judge Swanson); Appendix J – Order of the Court, In the District Court of Appeal First District, State of Florida; and Appendix K – Appellees' Answer Brief, In the District Court of Appeal First District, State of Florida.

JURISDICTION

Petitioner invokes this courts jurisdiction under 28 U.S.C. §1257(a). *See*, also, *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) and *Williams v. Florida*, 399 U.S. 78, 80 (1970), which recognizes that under Florida law, a District Court of Appeal is the highest state court from which a decision can be had, citing Fla. Const., Art. V, s 4(2), F.S.A. and the Florida Rules of Appellate Procedure, when the state appellate court chooses not to issue a written opinion. *See*, also, *Nash v. Florida Indus. Commission*, 389 U.S. 235, 237-238 (1967) where this Court recognized that a Florida appellate court is the highest state court to which a litigant can appeal when the appellate court chooses not to write an opinion.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment VIII:

> [ ] Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

United States Constitution, Amendment V:

> No person shall...be deprived of life, liberty, or property, without due process of law....

Constitution of the United States, Amendment XIV, Section 1:

> ...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE AND OF THE FACTS

In the early 1970's Paul Sims and Mattie Kelly began a business and personal relationship that lasted until Mattie Kelly's death in 1992 at age 80. The relationship survived both their marriage and their divorce. Upon Mrs. Kelly's death, Paul Sims continued his stewardship of Mrs. Kelly's business interests as the Trustee of the Mattie Kelly Trusts even though Mrs. Kelly could have chosen any or all of her five children.

The litigation for which Petitioner seeks this Court's review began eight years after Mrs. Kelly's death on November 14, 2000 when the first group of Mattie Kelly's beneficiaries sued Paul Sims. The remaining beneficiaries sued Sims in early 2004 and on May 18, 2004, upon the joint stipulation of Sims and the Kelly beneficiaries, Okaloosa County Circuit

Judge Ron Swanson ordered consolidation of cases 2000 CA 4075 and 2004 CA 385 into Case No. 2000 CA 4075.

On May 19, 2004, at a hearing on a motion for summary judgment that sought to oust Sims as Trustee, Circuit Judge Swanson heard arguments of counsel, ordered Sims removed as trustee, and issued a sweeping Order (the legal character of which was and is unclear) that appeared to freeze any Sims' assets that "...had any benefit or use directly or indirectly of any trust asset." *See* Appendix I, p. 49a.

Sims appealed his removal, whereupon the First District Court of Appeal ("First DCA") issued its first "per curiam affirm" decision upholding Sims removal as Trustee in *Sims v. Kelly*, 905 So.2d 128 (Fla. 1st DCA 2005). The Kelly beneficiaries argued and cited *Stanberry v. Escambia County*, 813 So.2d 278, 279 (Fla. 1st DCA 2002) for the legal proposition that jurisdiction to review a non-final order does not confer plenary appellate jurisdiction authorizing review of the other matters that the non-final order addresses.

In Petitioner Sims' 2009 appeal to the First DCA Sims argued what the Kelly beneficiaries argued in 2005 to the First DCA, i.e., that its 2005 "per curiam affirm" was a limited holding restricted to Sims' removal as Trustee and did not make plenary findings that Sims was personally liable for breach of fiduciary duty. The Appellees' counsel, Louis Rosenbloum, claimed that he lost that argument in 2005 (even though the Kelly beneficiaries emerged victorious). The following exchange at the November 12, 2009 oral argument is particularly telling:

[Attorney John N.C. Ledbetter argued to the First DCA that Trial Judge Linda Nobles was wrong when she found that "Judge Swanson's Order dated May 19, 2004, and the subsequent per curiam affirmation of that Amended Order by the First District Court of Appeal, is the law of case and decided all issues as to the personal liability of Defendant Sims for his actions as Trustee." Appendix B at p. 5a]

THE FIRST DCA: Well, you concede, I guess, that a per curiam affirmance can operate as the law of the case?

MR. LEDBETTER: Well, certainly. Certainly.

THE FIRST DCA: And that the decision of the Court, whether it's per curiam without opinion or with an opinion extends to questions not only actually presented to the Court, but those that are implied by the Court.

MR. LEDBETTER: If the Court had jurisdiction to reach the merits of the case. And I'm suggesting to you that only you know -- you were on the panel, Judge, and I certainly --

THE FIRST DCA: Well, we don't affirm cases when we don't have jurisdiction. We dismiss them for lack of jurisdiction.

MR. LEDBETTER: Well, you did have -- you did have -- what I'm suggesting is you did have jurisdiction to review the injunction, its scope and whether it was proper in the procedural steps that have to be taken.

THE FIRST DCA: Well, this was a summary judgment, wasn't it?

MR. LEDBETTER: It was a motion for summary judgment, but the Court reserved jurisdiction to determine damages. The argument was made that you can't reach the merits of that, Judge; all you can address is the scope of the injunction itself. And that was a large part of Mr. Rosenbloum's argument, and, in fact, that was the question -- I've reviewed the -- the video -- that was the question you directed to him, which you addressed the question of whether we even have jurisdiction to consider the merits of the summary judgment, or are we limited to the injunction. And that was the question you asked. And I would suggest to you that that's what the Court did.

[Attorney Ledbetter finished his argument and Attorney Louis K. Rosenbloum for the Kelly beneficiaries began his argument and quickly confronted Mr. Ledbetter's adoption of the argument Mr. Rosenbloum made in 2005.]

Attorney Rosenbloum (for Kelly beneficiaries): *I did argue in the first appeal that the Court did not have jurisdiction to entertain the summary judgment. But that wasn't the first argument I'd lost in the court and probably won't be the last. I was wrong. The Court disagreed with me. As you said, the Court doesn't issue rulings on the merits when it doesn't have jurisdiction. So the PCA affirmed the summary judgment order and what's included in that order.*

Thus, the First DCA in 2009 was attempting to figure out what it meant in 2005 while Attorney Rosenbloum clearly understood that if the First DCA accepted his limited jurisdiction argument in 2005 that he could not win on appeal in 2009.

At the first motion hearing on May 19, 2004, one of the beneficiaries' attorneys called the Sims' transactions "fiascos" and Sims "amoral" and argued that Sims improperly self-dealt by borrowing money from the Trusts, without Court approval, through his solely-owned SC of Okaloosa Corporation, to invest in the business deals described in paragraphs A through D of the Amended Order. See Appendix J at p. 47a. All of these transactions later turned out to be profitable for the Trusts. After the First DCA issued its first "per curiam affirm" in *Sims v. Kelly*, 905 So.2d 128 (Fla. 1st DCA 2005), the Kelly beneficiaries agreed that Sims had repaid all the money borrowed along with an annualized 10% return.

It was then the Kelly beneficiaries first articulated their new theory of recovery although they never repled the case. At the November 2005 hearing, Plaintiffs stipulated that Sims paid the Trusts $5.6 million, which was all of the money that Sims (and SC of Okaloosa) had borrowed from the Trust plus a ten percent annualized return. They claimed that all the money Paul Sims might personally have made from business dealings that involved alleged Trusts' funds even though the Trusts stated that Sims was to be paid for his work as Trustee. Most notably, absent from the record on appeal to the First DCA in 2009 was any hearing or trial transcript where Paul Sims was allowed to present evidence as to how Mattie Kelly wanted him to manage or invest trust assets or Sims

was to have been paid for his efforts even though the Trusts' language granted Sims the broadest discretion possible and even though Sims and Mattie Kelly had worked on business deals together for twenty years before Ms. Kelly died.

While the November 29, 2005 hearing consisted entirely of argument to Judge Bell, the Judge nevertheless declined to find that Sims was guilty of moral turpitude. As the Judge stated: "[ ] I'm not impugning any moral negatives to him." Attorney George R. Mead II argued for Sims that since the money complained about in 2004 had been paid back, the case was over. Attorney Bart Fleet, for the Kelly beneficiaries, countered with this argument:

> We firmly believe we had the right to pursue both of those [the money Sims borrowed and any profits Sims might have made], as you [Judge Bell] indicated, so he doesn't get rewarded by just paying back the promissory notes. That was the reason why he got removed, and that was affirmed by the DCA."

Toward the end of this hearing, Judge Bell ruminated about how the direction that the "whole new grounding" (referring to the new direction the Plaintiffs wanted to take the case) would affect the administration of the case. While the Judge gave guidance to the attorneys on how he liked to see discovery handled, the Judge also warned the attorneys about general case management:

> [ ] It's busy. They [all the attorneys involved in the case] have other cases. And believe me, we -- this is civil. Criminal up here is just

> devastating. And I have not always said that. The last several years it is devastating. Up until then, it was bad but manageable. It is no longer manageable.

Judge Bell went on to admonish the parties about getting into a long trial.

On December 21, 2005, Judge Bell issued his Order denying Sims' Motion to Dissolve the Injunction and referred to the May 19, 2004 Amended Order as a "permanent injunction." To this point, the lower tribunal had convened no forum involving the totality of trial requirements, i.e., sworn witnesses, extrinsic evidence, cross-examination, juries, or burdens of proof.

Throughout 2006 the parties skirmished over discovery issues and engaged in more motion practice. Sims changed attorneys twice. On September 20, 2006, the Kelly beneficiaries filed their Partial Motion for Summary Judgment seeking any income that Sims might have received from the business transactions in which Sims placed Trust funds.

During the course of 2006 through the spring of 2007, Sims engaged in a series of personal business transactions that eventually brought him before Judge Bell on Plaintiffs' motion to show cause for civil contempt. The precipitating event for the Kelly beneficiaries seems to have been Sims' filing for bankruptcy relief in southern Florida. However, from May 25, 2005 until May 17, 2007 the Kelly beneficiaries took no steps to attach Sims's personal assets or otherwise execute on Judge Swanson's May 2004 Order that – according to Judge Nobles'

conclusion of law in September 2008 – decided all issues of liability.

At the contempt hearing on May 17, 2007, Attorney Marshall Gilmore, representing Sims, first cautioned the trial court that May 19, 2004 Amended Order was far from clear on which of Sims' personal assets Sims was enjoined from using as he saw fit. After a lengthy debate among the attorneys, Paul Sims was finally sworn in.

Attorney Lisa Jo Spencer, for the Kelly beneficiaries, questioned Sims about checks that he wrote to pay his utilities, groceries, gifts, etc., and accused Sims of writing the checks without permission. Sims informed Attorney Spencer that he did not need permission because Sims had money of his own. After Attorney Spencer continued her line of questions for a period of time, Judge Bell interrupted and expressed concern about the time Attorney Spencer was taking with her case and the Judge's overall docket problems. Judge Bell said that he didn't want to get involved with Sims' ordinary bills (it being okay for Sims to spend his money on his normal bills, likewise, never defined). Then, the Judge focused on Plaintiffs' earlier argument about Sims transferring over a million dollars to companies in southern Florida in which he intended to invest.

Attorney Spencer accepted Judge Bell's admonition about "normal" bills and completed her line of questioning. Then, Attorney Gilmore, representing Sims, asked Sims about the origins of the money he transferred. Plaintiffs objected to Attorney Gilmore's argument that no injunction existed because the moneys subject of the May 19, 2004 Amended Order

were paid back. Finally, Judge Bell cut off Attorney Gilmore's line of questioning and although Judge Bell stated he wouldn't find Sims in contempt because he paid his electric bill, Judge Bell made the following finding:

> This has been a history of delay and obfuscate and procrastinate to keep this case from getting to the finish line. And it appears, and I'm going to find Mr. Sims to be in willful, deliberate civil contempt, without a doubt.

Then, the Judge lectured his audience at length about the harshness of the remedy, Sims advanced age and poor health, and that Sims "willfully, deliberately, and corruptly" transferred almost three million dollars in violation of the May 19, 2004 Amended Order. See Appendix J. Yet, in all of Judge Bell's statements on the record, the Judge never responded to Attorney Gilmore's objection that the May 19, 2004 Amended Order was not clear. As Attorney Gilmore framed the issue:

> Your Honor, I listened to the evidence that was proffered today, and I actually think that the movant failed to carry its burden of showing specifically that assets of the trust were expended in violation of the order. And I understand -- and I'm not trying to argue with the Court, and I hear exactly what you said about what you thought paragraph four of the May 2004 order says, but I actually, reading this order, and reading the King's English on the page to mean he is not enjoined from all of his assets, he is enjoined from spending,

> moving, writing assets out that were related to the trust directly or indirectly.
>
> I don't think that ties up the rest of his life. He testified that he had substantial assets -- other assets available to him. And I also think that the evidence didn't show, although objection was made and sustained by the Court, I don't think it showed that the monies they alleged and they asked him about were all the assets that are restricted by this court order. So he would only be -- if you found him in contempt, he would only be found in contempt for assets that the movant showed came from Okaloosa, came from the trust or were directly or indirectly benefited by the trust.
>
> That's what the language in the order says.

Trial Judge Bell brushed Attorney's Gilmore's suggestion aside even though the Kelly beneficiaries never introduced any evidence as to the origin of the money Sims sent to his then business associates in southern Florida. Equally important is that after Judge Bell announced that he would hold Sims in contempt of court and that Sims had the ability to purge, etc., Judge Bell, in considering Sims' attorney's suggestion to give Sims a period of time to try to come up with the $1.5 million demanded by the Kelly beneficiaries, had this exchange with Sims:

> THE COURT: I ask you, are you going to come back and start serving your six months, or are you going to take off, and then when you take off, sir, I'm going to issue a warrant for your arrest.

> THE WITNESS: No, sir. I will not take off.
>
> MR. PITRE [Attorney Gilmore's local counsel for Sims]: If you don't come up with the money, are you going to turn yourself in to jail?
>
> THE WITNESS: I will, yes, sir, if I can't find the money.

But Sims could not get the man to whom he gave the money, Michael Ravello, to give $1.5 million back. The $1.5 million could not be raised in one week from other sources. Attorney John Ledbetter, arguing for Sims at the November 12, 2009 oral argument, said:

> And, moreover, he was given a week to comply and purge or report to jail, and when he reported back, he was incarcerated. They [Judge Bell] never had another hearing as they're required to on whether Mr. Sims still had the ability to purge at that time.

On May 24, 2007, Judge Bell adjudged Petitioner Sims to be in contempt of court and sent the 87-year old man to the Okaloosa County Jail even though no one disputed that he was trying to purge the contempt and even though Judge Bell never considered Sims' ability to purge or heard evidence on the origins of the money that Sims transferred to the companies in southern Florida and even though Sims executed a Pre-Judgment Lien on his residence to the Kelly beneficiaries on May 23, 2007, in an effort to avoid imprisonment.

While imprisoned Sims continued his efforts to free himself, eventually executing a Stipulation to Purge

Contempt Order (dated August 7, 2007), which Judge Bell approved and incorporated into his Order dated August 7, 2007, and which allowed Sims to be released from Jail on condition that Sims execute the so-called "Joint Stipulation." Thus, by giving the Kelly beneficiaries a security interest in everything he owned, Sims was able to ransom himself from the county jail.

Prior to Sims release and during the summer of 2007, Plaintiffs continued with discovery, filing interrogatories and taking depositions. After Sims got out of jail, he discharged Attorney Gilmore and sought new legal counsel.

On October 3, 2007, while Sims remained without legal counsel, Plaintiffs filed a motion to compel Sims to answer yet another set of interrogatories (the fourth set) and produce documents that the Kelly beneficiaries had filed while Sims was jailed. On October 22, 2007, Sims, acting pro se, answered the interrogatories and produced all the documents he had left. (As part of his removal as Trustee back in 2004, Sims had turned over all the Trust records in his possession to the Kelly beneficiaries.) The Kelly beneficiaries responded with a Motion to Strike Pleadings arguing not that Sims did not respond but that Sims *pro se* responses did not make sense to them.

By the middle of November 2007, Sims had made contact with Attorney John N.C. Ledbetter and was attempting to engage him as counsel. On November 19, 2007, Judge Bell denied Attorney John N.C. Ledbetter's request for a continuation (based on Sims' attempts to retain Mr. Ledbetter and Ledbetter's need

to review the case) and went ahead with a hearing on Plaintiffs' motion to strike pleadings. At the hearing, Judge Bell took little time before he instructed Plaintiffs' attorneys on how he wanted the order striking pleadings drafted:

> So, you know, and let's put it in there and then it moves to where it moves to. But, you know, if Mr. Sims, you know, through this attorney that sent this thing [referring to Attorney Ledbetter's limited entry of appearance and request for a continuance] in, Mr. Ledbetter or whoever it is, you know, they want to go, hey, this is a harsh treatment of Mr. Sims, and we're going to take an appeal on that, that's fine, but I want the Appellate Court to have all of the facts. And if the Appellate Court understands the history of this, they will affirm the striking. But if they're not sure about it or if it's unclear to them they're going to be in the same situation of everybody else. You don't want to strike somebody's pleadings.
>
> [the judge discusses another matter with Attorney Spencer]
>
> Let me give it back to you [Plaintiffs' proposed Order], because I want it – I want a – you know, even if it's ten pages, I want the complete history to show the deliberate nonresponsive, noncandid, willful noncompliance.

On December 3, 2007, Judge Bell executed the Order Striking Pleadings against Sims as drafted by Plaintiffs' attorneys. This Order recited a history of

Sims' perceived recalcitrance throughout the litigation and ruled that Sims would not be allowed to present evidence as to matters "that were the subject of the Plaintiffs' Motion to Compel and this Court's Order Compelling Discovery dated October 9, 2007."

Still, neither the Kelly beneficiaries or Judge Bell were taking the position that Judge Swanson's 2004 Order decided all issues of liability and Judge Bell still had the case set as a jury trial.

Thereafter, Sims' new attorneys filed a series of motions and pleadings that included motions designed to set aside Judge Bell's ruling striking Sims' pleadings, deal with issues involving the so-called permanent injunction, and obtain an early jury trial for Sims. Along the way Judge Bell recused himself within a few days after Sims' filed his Initial Motion to Disqualify and before Plaintiffs could oppose the disqualification.

The case ended without a trial on the merits. Judge Nobles ruled against Sims on every pre-trial motion on every issue, and upheld every decision made by Judge Bell save Judge Bell's Order granting Sims' attorneys and Sims' a portion of the proceeds of the sale of Sims' St. Croix condo unit in early 2008. Although Judge Bell had tentatively scheduled a jury trial, Judge Nobles declined to consider even thinking about a jury trial.

After several hearings where the form of a final judgment was debated, Judge Linda Nobles entered Final Judgment on September 5, 2008 while denying Sims the right to present evidence or cross-examine

witness. The Final Judgment found for the first time that:

> Judge Swanson's Order dated May 19, 2004, and the subsequent per curiam affirmation of that Amended Order by the First District Court of Appeal, is the law of the case and decided all issues as to the personal liability of Defendant Sims for his actions as Trustee.

Thereafter, Sims appealed, lost his appeal, filed for a rehearing or that the First DCA issue a written opinion, lost that motion, and began to consider a petition for a writ of certiorari to this Court. Mr. Justice Thomas granted Sims a continuance to file his petition on February 18, 2010.

REASONS FOR GRANTING THE WRIT

I. The facts of this case reveal a trial court system confused about constitutional duty and further confused by the First District Court of Appeal's failure to explain its decisions. The Florida trial and appellate court systems need this Court's guidance to inform them that they have an affirmative duty to define the law of the case.

This case seriously ran off the rails in May 2004 when Circuit Judge Swanson allowed the Kelly beneficiaries to draft an order removing Sims as Trustee that was the very antithesis of what an

injunction is supposed to be.[1] Yet, even that Order (Appendix I) listed specific business investments that Judge Swanson adjudicated to be violative of Sims' fiduciary duties and that turned out to have benefited the Kelly Trusts permitting a 10% annualized return plus repayment of all principal. The Kelly beneficiaries admitted this lack of damages at the November 2005 hearing when Sims argued that the case was over and, earlier, in May 2005 before the First DCA, the Kelly beneficiaries had argued that the First DCA only had jurisdiction to review Sims' removal. Yet, Judge Nobles ruled over two and half years later that Judge Swanson's May 2004 Order and the First DCA's "per curiam affirm" decision decided all issues of liability.

Should this case grant certiorari, Sims will argue that the trial court wrongfully applied the doctrines of *res judicata* and law of the case to Plaintiffs' second set of theories and alleged facts. For the doctrine of *res judicata* to apply, identity in the things sued for and in the cause of action must exist, which means that

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[1] Of course, according to the Kelly beneficiaries, the May 2004 Order removing Sims as Trustee was not an injunction and the portion of the Order that seemed to be an injunction was not a final injunction because the May 2004 injunction was not final and Sims could not appeal the later hearing on July 13, 2004, because Judge Swanson continued Sims' motion to dissolve and that motion seems to have gotten misplaced in the shifting sands of time. *See*, Summary of Argument from the Kelly beneficiaries Answer Brief in Case No. 1D04-2673, attached hereto as Appendix K. Sims cites the brief because, presumably, when the First DCA decided against Sims, it materially agreed with the Kelly beneficiaries' arguments and, later, when Judge Nobles was trying to decipher the meaning, an attorney for the Kelly beneficiaries argued that the First DCA ruled that the May 2004 Order was a permanent injunction.

before *res judicata* can apply, Plaintiffs must prove identity of the facts. *Peeples v. Peeples*, 871 So.2d 945, 946 (Fla. 1st DCA 2004).

The doctrine of the law of the case is also a principle of judicial estoppel, but it is more limited and more flexible in scope. The doctrine of the law of the case requires that questions of law actually decided on appeal must govern the case in the same court and the trial court, through all subsequent stages of the proceedings. Under the law of the case doctrine, a trial court is bound to follow prior rulings of the appellate court as long as the facts on which such decision is based continue to be the facts of the case. Moreover, even as to those issues actually decided, the law of the case doctrine is more flexible than *res judicata* in that it also provides that an appellate court has the power to reconsider and correct an erroneous ruling that has become the law of the case where a prior ruling would result in a "manifest injustice." *Fla. DOT v. Juliano*, 801 So.2d 101, 106 (Fla. 2001).

Here, Plaintiffs admit that the facts, as they argued them to Judge Swanson on May 19, 2004 and to this Court on May 17, 2005, changed materially. All of Plaintiffs' pleas for equitable justice became hollow because the investments which they complained about made money. Yet, both Judges Bell and Nobles ignored the law that the fairness of a transaction can be a defense to self-dealing. *Cohen v. Hattaway*, 595 So.2d 105, 108 (Fla. 5th DCA 1992).

But, perhaps worst of all, is the First DCA's 2005 "per curiam affirm" decision. Was Appellate Attorney Louis K. Rosenbloum correct when he argued limited jurisdiction in 2005 or was Mr. Rosenbloum correct

when he argued four years later in 2009 that the First DCA obviously disregarded that argument? Or, because the First DCA did not write what they decided down on paper with appropriate citation, was it too easy to move the goalposts while the ball was still in play?

Presuming for sake of argument that Plaintiffs actually pled the case for which they sought relief – remembering that Sims made money for the Trusts from the investments about which the Plaintiffs complained at the May 2004 summary judgment hearing – at a trial to determine Sims' personal liability Sims would have the opportunity to present evidence that:

- the transactions of which Plaintiffs' complain were structured to prevent risk to the Trusts and Sims did not, therefore, self-deal. That is, Sims could have directly invested the Trust in the transactions complained of, but because Sims sought the advice of counsel on how to best protect the Trusts and because Sims was to have been compensated for serving as Trustee, the evidence at trial may well show that the form of the transaction did not amount to self-dealing;

- Settlor Mattie Kelly authorized Sims to self-deal, Sims entered into the transactions in good faith, and the Trusts suffered no damages from Sims' self-dealing. That is, at no point in any of the 7000+ pages of the Record on Appeal does the Court refer to or mention what Mattie Kelly, the Settlor, wanted or directed Paul Sims to do;

- as a non-professional trustee, Sims, as Trustee, is not held to the standard of the profession trustee, Sims acted in good faith upon advice of counsel and other professionals, and his investments benefited the Trusts; and/or,

- the Kelly beneficiaries were on notice as to the transactions in which Sims was engaged and how Sims benefited therefrom – and the Kelly beneficiaries failure to timely object equated to consent and waiver; and/or,

- the Trusts entitled Sims to reasonable compensation and that the moneys he received constituted reasonable compensation.

There is a wide field within which the trustee may determine whether to act or not and when and how to act. Beyond that field the court will control. How wide that field is depends upon the terms of the trust, the nature of the power, and all the circumstances. *Demello v. Buckman*, 916 So.2d 882, 887 (Fla. 4th DCA 2005). The trial judges here, primarily Judges Bell and Nobles, never let Sims present his case.

Instead, Judge Swanson removed Sims as Trustee in 2004. The First DCA let the removal stand in 2005 without telling anyone why and with the only logical legal presumption being that the Kelly beneficiaries' arguments carried the day. Then, in May 2007, Judge Bell sent Sims to the county jail without any evidence that the funds Sims was transferring was anything but his own. After that, Judge Bell struck Sims pleadings on the damage issues raised in the Kelly beneficiaries summary judgment motion.

Judge Nobles responded to the limited holding of Judge Swanson by adjudging that the First DCA's "per curiam affirm" meant that Sims could present no defense. Judge Nobles responded to Judge Bell's limited order striking only the pleadings relating to amount of damages by adjudging that Sims could not present any evidence at all.

On August 29, 2008, at the last of a continuing/set of hearings before Judge Nobles where the Judge and the parties where trying to figure out whether it was a jury trial or not and if so, or if not, what type of evidence could be put forth, Attorney Jeff Sauer, for the Kelly beneficiaries, argues to Judge Nobles that the issue of whether or not Judge Swanson's May 2004 Order was a permanent injunction. Attorney Sauer says:

> [ ] It was argued as part of the [2005 appellate case] appeal that we were entitled to a permanent injunction. That was part of what they argued and the appellate court found, yes, we were. [ ]

As cited herein, in the 2005 appellate process, both in brief and oral argument the Kelly beneficiaries argued just the opposite.

Finally, at that August 2008 conference of the judge and attorneys, after more wrangling, Judge Nobles repeats what she found throughout the spring and summer of 2008:

> THE COURT: Well, I'm going to rely on the plaintiffs' [the Kelly beneficiaries] assertion that it [the issue of the nature of the May 2004

> Order] went up for appellate purposes and it was decided already and it's the law of the case. If that turns out not to be the case, we'll be back here discussing that issue.

Vol. IV, August 29, 2008, *in Chambers Hearing before the Honorable Linda Nobles*.

Of course, Judge Nobles had to take somebody's word on what the First DCA did because the First DCA did not tell anyone which of the Kelly beneficiaries' arguments it bought. But – for sure – had Judge Nobles bothered to actually look at what the Kelly beneficiaries argued to the First DCA, she would not have made the decision she did about the nature of the May 2004 Order.

No trial judge (not Judge Swanson, not Judge Rasmussen, not Judge Bell and not Judge Nobles) and no appellate judge – in the long eight years of litigation – confronted Mattie Kelly's intent, the possibility that Paul Sims' executed his duties in good faith, the extent to which Paul Sims relied on professional advice, or the extent of the beneficiaries' knowledge or what their knowledge meant.

As Professor Melanie Leslie has observed:

> A review of case law over the past decade establishes that not one court has [ ] imposed personal liability for self-dealing without advance approval when the trustee's self-interested transaction was a good faith attempt to benefit the trust and effectuate the settlor's objective

Melanie B. Leslie, *Common Law, Common Sense: Fiduciary Standards and Trustee Identity*, 27 Cardozo L.Rev. 2713 (2006).

In another case where certain of the Kelly beneficiaries attempted to undo their Mother's bequeath of property to the local community college, *Kelly v. Okaloosa Walton Cmty. College Found., Inc.*, 925 So. 2d 315 (Fla. 1st DCA 2006)[2], the First DCA entered yet another "*per curiam* affirm" decision.[3] In marked contrast to this case, the trial judge shepherded the case to trial, considered extrinsic evidence, the language of the will, and testimony from Mattie Kelly's associates and relatives, including various lawyers, about what Mattie Kelly wanted.

But perhaps the incongruity that pushes this whole battle to the ludicrous and the bizarre is the Sunnyside

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[2] The oral arguments on February 21, 2006, may be viewed on the First DCA's archives.

[3] In May 2000 Florida's Committee on Per Curiam Affirmed Decisions of the Judicial Management Council issued its 200-page Final Report and Recommendations. Sims expects to significantly cite to this Report should the Court grant certiorari. At page 25 of the Report, the Committee reports that 63% of all cases going to Florida's courts of appeal are disposed of with Per Curiam Affirm decisions. Sims can find no statistics that reveal anything other than this percentage may be increasing as opposed to decreasing. In 2003, in his **A Report Submitted to the Louisiana Supreme Court and the Louisiana Circuit Courts of Appeal,** Dr. Roger A. Hanson reported that Florida appellate courts used per curiam affirmances to dispose of 66% percent and that that percentage occurred in the same frequency in civil and criminal appeals.

cases in Louisiana that marched along in time, but not in legal cadence, with this case.

Sims had always contended that he formed SC of Okaloosa, Inc. as a separate corporation to insulate the Mattie Kelly Trust from liability. Paul Sims took his promises to Mattie Kelly seriously, which were that Sims would make Mattie Kelly's children financially secure while insulating the trust assets. As cited *supra*, the Kelly beneficiaries took the successful legal position with Judge Swanson in 2004 that SC of Okaloosa was merely Paul Sims alter ego and that SCO's Louisiana investment in Utah land was too risky.

Paul Sims had placed some of the Mattie Kelly Trust's funds, along with his own, in a 26,000 acre real estate parcel located in Utah but being administered by the bankruptcy court in Louisiana. In fact, in one of a series of cases involving that investment the United States District Court for the Western District of Louisiana affirmed a bankruptcy court order holding that parties had entered into valid agreement of compromise. *S.C. of Okaloosa, Inc. v. Sunnyside Timber LLC*. 81 Fed. Appx. 840, 2003 WL 22867613 (5th Cir. La. 2003). Later, when the debtor (sibling LLCs Sunnyside Timber and Sunnyside Land) attempted to undo the profitable investment Sims had made for the Mattie Kelly Trusts, for himself and SC of Okaloosa, Inc. ("SCO"), SCO defended the investment. In 2008, *In re Sunnyside Timber, LLC*, 2008 WL 5146650, 5 (Bkrtcy.W.D.La. 2008) held in favor of SCO that a certain letter was not relevant to the dispute when the debtor was attempting to use this letter to prove fraud.

In 2009, *In re Sunnyside Timber, LLC*, 413 B.R. 352, 369-370 (Bkrtcy.W.D.La. 2009) gave summary judgment to the Mattie Kelly Trust letting it out of an adversary proceeding where the debtor sued the Mattie Kelly Trusts contending that Paul Sims was SCO and SCO and Sims were the Mattie Kelly Trusts. The Louisiana bankruptcy court concluded that the debtor did not come forward with substantial evidence supporting the first requirement under Florida law for establishing an agency relationship: an acknowledgment by the Mattie Kelley Trust that Sims was to act as its agent in connection with Sims' negotiations with Breland and the sale of the Utah Property (the 26,000 acres). The court held that while Sims may have acted as the agent for the Trust when he served as its trustee, the court agreed with the Mattie Kelly Trust when it contended that this agency relationship was terminated when Sims was removed as trustee in 2004 by Judge Swanson and explicitly barred from taking any actions with respect to property of the Trust. The record on which the bankruptcy court granted the Mattie Kelly Trust summary judgment included Judge Swanson's 2004 court order.

Moreover, in the Louisiana proceeding, the Mattie Kelley Trust also submitted affidavits by its then current trustees (the attorneys representing the beneficiaries of the Trusts) stating that Sims was never authorized by the Trust to act as its agent. The bankruptcy court went on to find, at the behest of the Mattie Kelly Trust, that Sims was not acting on behalf of the Mattie Kelley Trust in putting the deal together that repaid the Mattie Kelly Trust all the funds it had loaned to SCO along with an annualize return of 10% per annum for several years. *Id.*

In fact, the bankruptcy court entered specific factual findings that Sims did not act on behalf of the Trust. While the Circuit Court of Okaloosa County and the First DCA accepted the Kelly beneficiaries' argument that Sims and SCO were the alter egos of the Mattie Kelly Trusts, the Louisiana Bankruptcy Court said that: "Conclusory statements that the Trust entered into a collusive agreement with Breland through Sims as its agent/alter ego are not sufficient to survive summary judgment." *Id.*

In Louisiana, Sims and SCO sided with the Mattie Kelly Trust and the Kelly beneficiaries earned millions of dollars in profits. In Florida, the Kelly beneficiaries put Sims in jail and took all of his property.

An excellent history of this very major money-making transaction is set out in *Sims v. Sunnyside Land, LLC*,. 425 B.R. 284, 286 289 (W.D. La. 2010). There the District Court, sitting in its appellate capacity, recounted that the two primary acts that constituted the deal occurred in December 2004 and in February 2005, – after Sims had been removed as Trustee – when SCO actually bought the land that it later resold at a substantial profit. The Mattie Kelly Trusts and the Mattie Kelly beneficiaries (again, the Trustees of the Trusts were also the attorneys for the beneficiaries) agreed to these transactions and were, in fact, cheering and pushing Sims and SCO to make these deals from which the Mattie Kelly Trust and the Mattie Kelly beneficiaries prospered.

This Court should grant certiorari on this issue if only for the purpose of instructing the First DCA that in complicated cases it must reveal what law the First DCA is applying – particularly when the trial courts

are incarcerating non-professional former trustees when they successfully execute their duties.

II. Florida trial and appellate courts overstepped their authorities when they imprisoned Petitioner and confiscated his property without due process of law. The Florida court system needs this Court's guidance to remind them that there are constitutional protections guaranteed in the Bill of Rights which the Petitioner must be afforded.

Petitioner Paul Sims does not believe that the United States Constitution allows the Florida courts to put him in jail, strip him of every material thing he owns, adjudge him civilly liable for over Seven Million Dollars, and do all this without ever having a trial on the merits.

In addition, Petitioner Sims contends that Florida's First District Court of Appeal had the duty to inform Petitioner Sims why the Okaloosa Circuit Court could take away his freedom and everything he had without a trial. Here, Sims seeks review by this Court and, eventually, hopes this Court will compel the First DCA to, at a minimum, write an opinion explaining the legal reasoning that supports the First DCA's affirmation of the many trial court orders and judgments that took his freedom and his net worth without first having a trial on the merits. Once the First DCA is ordered to write an opinion – and presuming that the discipline of having to substantiate a written opinion does not change the First DCA's per curiam affirmation – Petitioner can then avail himself of the right of appeal to the Florida Supreme Court.

Petitioner Sims understands that this Court has little concern with the facts of his case or how the case might be adjudicated if Sims ever gets his day in court. Sims petitions this Court because the Bill of Rights to the United States Constitution should require Florida appellate courts to provide due process and equal protection to civil litigants in the First DCA's own rules of appellate procedure and to take special care when civil litigants are thrown in jail for civil contempt in order to insure that civil litigants are not subjected to cruel and unusual punishment through misuse of judicial authority.

Here, the Okaloosa County Circuit Court put Sims in jail on a civil contempt order and then held Sims hostage until be paid the ransom demanded by the trial court, which amounted to everything Sims owned. Then, the Circuit Court struck his pleadings, denied him a jury trial, prohibited him from putting on any evidence at even the judge-tried case, and held in August 2008 – for the first time -- that Judge Swanson's 'injunction' issued in May 2004 found against Sims on all issues of liability and was the "law of the case."

The case law of every state and of every federal jurisdiction holds that it is the duty of the trial court to explain the law to the jury. *See*, *e.g.*, *FedEx Ground Package System, Inc. v. Applications Intern. Corp.*, 2010 WL 528467, 4 (W.D. Pa. 2010). Here, Petitioner Sims proffers the legal concept that it is the duty of an appellate court to explain the law to a losing appellant when the law of the case at the trial court level is convoluted and contradictory particularly when the facts of the case are largely not in dispute.

Sims' position before the First DCA was that he was right and the many judges of the Okaloosa County Circuit Court were wrong. Here, Sims contends that: 1) the undisputed facts show that Trial Judge Bell did not make the necessary finding that Sims' funds emanated from the Kelly Trusts business dealings (that is, if the May 2004 Order is not unconstitutionally vague); and that 2) Trial Judge Bell erred when he found that Sims had the ability to purge the contempt. Further, under the facts of this case, Sims will argue that the punishments inflicted on him and the many legal conundrums posed at the trial court level by the First DCA's failure in 2005 to write an opinion required the First DCA to write an opinion in 2009.

Without a written opinion, Florida law prohibits Sims from appealing to the Florida Supreme Court on the First DCA's unconstitutional denial of Sims' constitutional right to a trial by jury.

This, Sims avers, is a denial of procedural due process, a denial of equal protection, and a continuing infliction of cruel and unusual punishment in that Trial Judge Bell, irritated as he was, wrongfully imprisoned Sims and confiscated Sims' property. If this is not so, then, the First DCA should be constitutionally compelled to explain the reasons it is not so.

What is seen through the four years from the Swanson order removing Sims as Trustee to the First DCA's first 'per curiam affirm' to Judge Nobles' Final Judgment interpreting the Swanson Order to mean that all issues of personal liability had been decided against Sims to the First DCA's second 'per curiam

affirm' is that no Judge really understood what the Swanson Order meant after the 2005 'per curiam affirm' and that the First DCA in its 2009 'per curiam affirm' was likewise looking to avoid accountability for dropping the ball in 2005.

The proper method of reviewing a judgment for civil contempt is by a petition for common law writ of certiorari. *National Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 458 (1958). Should this Court grant certiorari it will find a fact situation that is in direct conflict with established constitutional law.

Unlike criminal contempt proceedings, which are commenced by the court and are punitive in nature, "[c]ivil contempt is designed to coerce the contemnor to comply with a court order, and a civil contempt action is brought by a private party, not the court." *Wolfe v. Coleman*, 681 F.2d 1302, 1306 (11th Cir. 1982). Moreover, once a court finds a party to be in contempt, the court must also find that the contemnor has the ability to purge himself of contempt by obeying the court order. *Id.*

In *Hofmann v. EMI Resorts, Inc.*, 2010 WL 556516, 11 (S.D. Fla. 2010) the Court found the accused contemnors to be in contempt, but not until the trial judge presided over extensive hearing where he specifically found that the wrongfully transferred funds came directly from trust funds and where he specifically found that the contemnors had the ability to undo the transfers.

Here, Trial Judge Bell did not hear evidence on the origin of the funds that were undisputedly in Sims'

possession, but specifically found that Sims tried to get Ravello to give the money back. Then, Sims offered to give security interests to the Kelly beneficiaries in other Sims property to stay out of jail, but Trial Judge Bell was determined to have his vengeance.

Only in situations where a trial judge has competent and substantial evidence that the contemnor truly carries the keys of his prison in his own pocket can the trial judge find a contemnor in civil contempt. *See Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 828, (1994).

Rinaldi v. Yeager, 384 U.S. 305, 310 (1966) established the benchmark for state appellate court review: "This Court has never held that the States are required to establish avenues of appellate review, but it is now fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts." *See*, also, *M.L.B. v. S.L.J.*, 519 U.S. 102, 111 (1996).

Here, after the First DCA cast Sims into legal uncertainty by failing to reveal what it had done in its 2005 "per curiam affirm" decision, the Kelly beneficiaries struggled for two years to figure out what they should do with their "victory," i.e., removing Sims as Trustee. Then, when Sims concluded the Kelly Trust's Louisiana affairs successfully and continued his life, the Kelly beneficiaries filed a civil contempt citation. Trial Judge Bell, obviously unhappy that the case was still pending, held Sims in civil contempt while failing to make the most basic findings he was required to in order to lawfully imprison Sims.

The First DCA compounded the judicial abuse in 2009 when it hid behind a "per curiam affirm." Should this Court grant certiorari it will find this case to be an excellent vehicle to assess the extent to which an appellate system can obfuscate the law by refusing to tell litigants what the law is.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX

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APPENDIX A

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D08-4772

[Filed November 18, 2009]

PAUL SIMS,	)
	)
Appellant,	)
	)
v.	)
	)
SUSAN K. SCHLOTT, et al. and IMOGENE KELLY, et al.,	)
	)
Appellees.	)
	)

Opinion filed November 18, 2009.

An appeal from the Circuit Court for Okaloosa County. Linda Nobles, Judge.

John N. C. Ledbetter and Samuel B. Taylor of Ledbetter & Associates. P.L., Destin, for Appellant.

Louis K. Rosenbloum of Louis K. Rosenbloum, P.A., Pensacola; Kathleen K. DeMaria and Jeffrey T. Sauer of Smith, Sauer & DeMaria, Pensacola; and Lisa Jo Spencer and H. Bart Fleet of Fleet, Spencer & Kilpatrick, P.A., Shalimar, for Appellees.

PER CURIAM.

AFFIRMED.

WEBSTER, DAVIS, and PADOVANO, JJ., CONCUR.

APPENDIX B

IN THE CIRCUIT COURT IN AND FOR OKALOOSA COUNTY, FLORIDA

Consolidated Case No.: 2000-CA-4075

[Filed September 5, 2008]

SUSAN K. SCHLOTT, et al. and IMOGENE KELLY, et al.,	)
Plaintiffs,	)
v.	)
PAUL SIMS, et al,	)
Defendants.	)

FINAL JUDGMENT

THIS MATTER came before the Court on Defendant Sims' Motion to Enter Final Judgment. The Court, having reviewed the court file, reviewed the relevant authority, heard argument of counsel, and being otherwise fully advised in the premises, finds that entry of Final Judgment resolves the remaining issues, if any, that were to be established by Plaintiffs, and makes the following findings of fact and conclusions of law:

Findings of Fact

1. On May 19, 2004, the Honorable Ron Swanson, the Circuit Court Judge then assigned to the consolidated case, found Defendant Sims to be personally liable for his actions as Trustee and ordered Defendant Sims' removal as trustee. In doing so, Judge Swanson issued an injunction.

2. Defendant Sims appealed Judge Swanson's non-final Order, which was *per curiam* "AFFIRMED" in *Sims v. Kelly*, 905 So.2d 128 (Fla. 1st DCA 2005). The First DCA denied a rehearing in *Sims v. Kelly*, 2005 Fla. App. LEXIS 11418 (Fla. 1st DCA 2005).

3. On September 20, 2006, Plaintiffs filed their Motion for Partial Summary Judgment, which Defendant Sims opposed by filing affidavits and legal briefs.

4. On December 3, 2007, Judge Frank Bell issued an Order Striking Pleadings against Defendant Sims. which also ordered that Defendant Sims would not be allowed to present evidence as to matters "that were the subject of the Plaintiffs' Motion to Compel and this Court's Order Compelling Discovery dated October 9, 2007."

5. At the Case Management Conference on June 11, 2005, during the arguments on Plaintiffs' Motion in Limine and Defendant Sims' Response thereto, Plaintiffs stated and affirmed that their Motion for Partial Summary Judgment traces and sets forth their claim for equitable damages.

6. Per Defendant Sims' motion, the facts – as set forth in Plaintiffs' Motion for Partial Summary Judgment, which contained documents obtained through third parties, from the public records, and from Defendant Sims' bankruptcy records – due to the Court's ruling, could be proven at trial, and were not calculated through fraudulent means.

Conclusions of Law

IN RELIANCE on the foregoing Findings of Fact, the Court's Conclusions of Law are that:

7. Judge Swanson's Order dated May 13, 2004, and the subsequent per curiam affirmation of that Amended Order by the First District Court of Appeal, is the law of the case and decided all issues as to the personal liability of Defendant Sims for his actions as Trustee.

8. Because the Amended Order dated May 19, 2004 found that Defendant Sims was personally liable, and because Judge Bell's Order dated December 3, 2007, struck Defendant Sims' pleadings, Defendant Sims is precluded from presenting any evidence or defenses as to his liability to Plaintiffs and is prohibited from introducing evidence or defenses challenging the evidence Plaintiffs would have produced tracing trust assets and profits obtained by Defendant Sims directly or indirectly from the use of trust assets.

9. Plaintiffs' claims are equitable and, as a result, the jury trial demanded by some of Plaintiffs is disregarded.

IT IS THEREFORE ORDERED AND ADJUDGED that:

A. The amount of traceable profits generated by the improper use of the Trusts' assets is six million, one hundred fourteen thousand seventeen dollars and ninety-one cents ($6,114,017.91) and judgment is hereby entered against Defendant Sims for said amount in favor of Plaintiffs for the benefit of the Mattie M. Kelly 908 Trust, whose address is 24 Walter Martin Road, Fort Walton Beach, FL 32548, together with interest at the rate of 11% per annum from the date hereof, for which let execution issue.

B. In addition to the traceable profits set forth above, the interest of Defendant Sims in Mare Creek Development Corporation, a Florida corporation, including any undistributed monies, is directly traceable to trust assets and is therefore held in trust for the benefit of the Mattie M. Kelly 908 Trust. Defendant Sims shall execute such documents as may be necessary to transfer such interest to Plaintiffs for the benefit of the Mattie M. Kelly 908 Trust. If Defendant Sims fails to effectuate such transfer within thirty (30) days from the date such documents are provided to Defendant Sims' counsel, the Court shall appoint a special master at Defendant Sims' expense, to execute the documents necessary to complete said transfers.

C. Defendant Sims shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet) including all attachments, and serve it on Plaintiffs' attorneys within forty-five (45) days from the date of this Final Judgment, unless the

final judgment is satisfied or post-judgment discovery is stayed.

D. The Court's prior orders, including the injunction contained in the Amended Order dated May 19, 2004, and affirmed by the First District Court of Appeals, shall remain in full force and effect until such time as this Final Judgment is satisfied or the injunction is modified by further order of the Court. The lien related to this Final Judgment shall relate back to the prejudgment liens given to Plaintiffs pursuant to the Stipulation to Purge Contempt Order, dated August 7, 2007.

E. Jurisdiction of this case is retained to enter further orders that are proper to compel Defendant Sims to complete form 1.977, including all required attachments and serve it on Plaintiffs' attorneys, and to award attorney's fees and costs.

DONE AND ORDERED in Pensacola, Escambia County, Florida this 29th day of August 2008.

/s/ Linda L. Nobles
LINDA L. NOBLES
CIRCUIT JUDGE

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APPENDIX C

IN THE CIRCUIT COURT IN AND FOR OKALOOSA COUNTY, FLORIDA

Consolidated Case No. 2000-CA-4075

[Filed September 5, 2008]

SUSAN K. SCHLOTT, et al. and IMOGENE KELLY, et al.	)
Plaintiffs,	)
v.	)
PAUL SIMS, et al	)
Defendants.	)

ORDER ON PLAINTIFFS' MOTION IN LIMINE

THIS CAUSE came on to be heard before the Court on July 23, 2008 upon the Plaintiffs' Motion in Limine, the Court having heard the arguments of counsel and being otherwise fully advised in the premises therein, it finds:

A. The Order Striking Defendant's Pleadings is clear, Defendant Sims' Pleadings are struck; therefore, Defendant is not entitled to put on affirmative evidence or defenses as to liability, Plaintiffs' proof of

tracing of trust assets, or Plaintiffs' proof of profits derived from the use of trust assets;

B. The issue of liability has been determined by the May 19, 2004 Amended Order, the PCA decision of the First District Court of Appeal, and the Order Striking Defendant's Pleadings;

C. At trial, Plaintiffs must prove the entitlement to a judgment based on the tracing of trust assets and profits received by Defendant Sims, directly or indirectly, from the use of trust assets;

D. The Order Striking Defendant's Pleadings prohibits Defendant Sims from introducing evidence or defenses that challenge the evidence Plaintiffs present related to the tracing of said assets and profits derived therefrom.

ORDERED and ADJUDGED:

1. Defendant Sims is prohibited from introducing evidence or defenses as to his liability to Plaintiffs for his breaches of fiduciay duty and self dealing;

2. Defendant Sims is prohibited from introducing evidence or defenses challenging the evidence Plaintiffs introduce tracing trust assets and profits obtained by Defendant Sims, directly or indirectly, from the use of trust assets.

3. Plaintiffs' Motion in Limine is Granted.

ORDERED in Escambia County, Florida on the 29th day of August, 2008.

/s/ Linda L. Nobles
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West Palm Beach, Florida 33401

APPENDIX D

IN THE CIRCUIT COURT IN AND FOR OKALOOSA COUNTY, FLORIDA

Consolidated Case No. 2000-CA-4075

[Filed December 28, 2007]

SUSAN K. SCHLOTT, et al., and IMOGENE KELLY, et al.,	)
Plaintiffs,	)
v.	)
PAUL SIMS, et al.,	)
Defendants.	)

ORDER STRIKING PLEADINGS

This action was heard on Plaintiffs' Motion to Strike the Pleadings of Defendant, Paul Sims, and having reviewed the file and heard the arguments of counsel,

THE COURT finds there is a long history of habitual and willful defiance of Court orders and intentional bad faith in responding to legitimate discovery requests, which history includes, but is not limited to the following:

1. On May 19, 2004, the court entered an Amended Order Removing Trustee, Paul Sims, and Appointing Successor Trustee(s). That Order contained a broad injunction and requires Mr. Sims to answer within ten (10) days eleven interrogatories that were previously propounded upon him. He did not do so. A motion was filed to hold him in contempt and a hearing was set. Prior to the hearing, answers were furnished, but those answers were vague and/or non-responsive.

2. Plaintiffs served a Subpoena Duces Tecum for Deposition on Mr. Sims. The deposition was scheduled for July 12, 2004. Mr. Sims failed to appear. A Second Amended Notice of Taking Deposition Duces Tecum was served on the Defendants and the deposition was re-scheduled for September 20, 2004. Mr. Sims again failed to appear.

3. Plaintiffs then filed a motion to compel deposition and production of documents. A case management conference was held on January 26, 2005, at which time the motion was heard. On February 8, 2005, this Court ordered Mr. Sims to appear to be deposed on February 15, 2005 and to bring the documents as requested in the Second Amended Notice of Taking Deposition that was dated October 7, 2004. In that order, the Court warned the Defendant that if he violated the terms of this Order, then the Court will consider imposition of appropriate sanctions.

4. On October 4, 2005, Plaintiffs filed a Motion to Compel Answers to Interrogatories, Deposition Questions and Production of Documents, which

motion was set for hearing on November 29, 2005. The motion was related to discovery that was requested in January and February of 2005. On November 29, 2005, this Court advised the parties as to discovery, that if a party was obligated to answer, "But a party takes a hard line and goes 'I'm not going to answer it,' we're going to be in for a bad situation if it's a party. It's going to be a train wreck." This Court further said that it was taking a liberal approach to discovery and "if there is some nexus to a possibility that it might lead to, it's going to be answered" and if the Court had to rule on objections, then the "ruling comes down and sanctions. Don't forget that last little part. Don't forget the last little part that if you put people to unnecessary work, there's a price called sanctions."

5. On or about January 11, 2006, Defendant was served with a Renewed Request for Production. Plaintiffs then filed another Motion to Compel on February 13, 2006, and because some, but not all of the documents were produced, amended Motions to Compel were filed on April 26, 2006, and July 21, 2006. A hearing was scheduled for August 7, 2006. Defendant moved for a protective order.

6. On August 25, 2006, Plaintiffs served on Defendant a Third Set of Interrogatories; a Third Amended Motion to Compel Responses to Plaintiffs' Renewed Request for Production; and a Third Request for Production. On that same day, Plaintiffs filed a Motion for Order to Show Cause as to why Defendant should not be held in contempt for violating the Court's injunction as set forth in the Order of May 19, 2004. A hearing was scheduled on the Third Amended Motion to Compel Responses

and the Motion to Show Cause for October 10, 2006.

7. On August 30, 2006, the Court signed the Order to Show Cause setting the hearing October 10, 2006. An Amended Order to Show Cause was signed by this Court on September 18, 2006. On September 21, 2006, Defendant filed a Motion for Extension of Time.

8. On October 10, 2006, immediately prior to the scheduled hearing, Plaintiffs and the Court were informed that the Defendant had filed bankruptcy. As evidenced by the bankruptcy court's order dated April 13, 2007, filed in this action, on April 9, 2007, after the commencement of the evidentiary hearing in the bankruptcy proceedings on Plaintiffs' motions to (i) Dismiss Case As Bad Faith Filing, (ii) Transfer Venue to the Northern District of Florida, and (iii) Modify the Automatic Stay, Mr. Sims announced he would consent to the dismissal of his Chapter 11 bankruptcy case, which was so ordered by the bankruptcy court.

9. On April 18, 2007, Plaintiffs filed their Second Amended Notice of Hearing on their Second Amended Motion to Show Cause and their Motion for Partial Summary Judgment. On April 27, 2007, this Court entered a Second Amended Order to Show Cause as to why Defendant should not be held in contempt for violating the injunction contained in the May 19, 2004, order of this Court. A hearing was scheduled for May 17, 2007, on the Court's Second Amended Order to Show Cause and the Plaintiffs' Motion for Partial Summary Judgment.

10. On May 8, 2007, Defendant filed a Motion for Continuance. The motion was denied.

11. On May 16, 2007, Defendant served a Response in Opposition to Motion for Summary Judgment and an unsigned affidavit, basically stating that figures set forth in Plaintiffs' Motion for Partial Summary Judgment were incorrect but providing no evidence to support such allegation.

12. As evidenced by the Order Adjudging Contempt dated May 24, 2007, at the hearing on May 17, 2007, this Court found that "the Defendant, Paul Sims, willfully, deliberately and corruptly violated the injunction in the Court's May 19, 2004 Amended Order and transferred in excess of one million five hundred thousand dollars ($1,500,000.00+) without obtaining Court approval. . . ."

13. Defendant was given time to purge the contempt to avoid commitment to the county jail. He did not do so and was committed on May 30, 2007. On June 8, 2007, Defendant filed an Emergency Motion to Modify Terms of Amended Order Adjudging Contempt to Allow for Community Control or in the Alternative House Arrest. On June 15, 2007, Defendant filed a Motion for Emergency Stay and Motion to Permit Additional Property to Satisfy Purge Provision. On June 26, 2007, Defendant filed another Motion to Convert Confinement in Jail to House Arrest. On August 7, 2007, a hearing was held on Defendant's motions and the Court entered an order adopting the parties'

Stipulation to Purge Contempt Order and stated that upon execution, the Court would order the Defendant' s release from jail. The Stipulation was signed by the Defendant and he was released.

14. The Stipulation and thus the Order adopting and incorporating it dated August 7, 2007, required the Defendant to sign such documents as are necessary to perfect the Plaintiffs' pre-judgment liens in various described properties. The Defendant failed to do so and at this same hearing on November 19, 2007, the Court announced that it would enter an order holding the Defendant in contempt.

15. On June 7, 2007, Plaintiffs had served their Fourth set of Interrogatories and Fourth Request for Production directed at the alleged disputed issues of fact relating to the Motion for Partial Summary Judgment. The Defendant did not answer or respond. On October 1, 2007, Plaintiffs filed their Motion to Compel Answers to Interrogatories and Production of Documents relating to the Fourth Set of Interrogatories and Fourth Request for Production. After hearing, an Order Compelling Discovery was entered by the Court on October 9, 2007, giving the Defendant until October 22, 2007, to answer fully and completely the interrogatories and fully comply with the request for production. In that Order the Court found there was a history "showing Defendant's continued lack of compliance with the rules of discovery where Plaintiffs have had to file numerous motions to compel and Defendant's failure to answer even

simple questions asked of him at evidentiary hearings; that Defendant has wilfully and deliberately failed to comply." In that Order the Court advised the Defendant that if he did not comply with the Court's Order, "the Court will enter an order striking all of defendant's pleadings. In addition, no further pleadings or evidence shall be allowed by or on behalf of Defendant as to the matters that are the subject of the Plaintiffs' motion to compel."

16. On November 19, 2007, a hearing was held to determine whether or not Defendant had failed to comply with the Court's Order Compelling Discovery dated October 9, 2007.

The Court finds that the Defendant, Paul Sims, has been intentionally vague and non responsive, both historically and as to this Court's latest Order Compelling Discovery. The Defendant has continued to act in bad faith, failing to be candid, and failing to respond to legitimate discovery. The Defendant has habitually and wilfully defied Court orders to the point that he has been previously jailed for contempt. Based upon a review of the case, the Court finds that the Defendant has had no intention to respond to discovery in a good faith way and that specifically the Defendant failed to fully and completely answer the interrogatories and failed to fully respond to the request for production that were the subject of the Court's latest Order Compelling Discovery. Just as examples, the responses received from the Defendant include statements such as, "The records to determine the deductions for this investment were not available and have been requested. . . ." and "There are possible deductions for this transactions (sic), however the

documents to determine these deductions were not available and have been requested. . . ." Plaintiffs had requested the latest information in June of 2007. For the Defendant to answer in this manner on the day that the responses were due, after knowing this information had been requested for nearly six months, is unacceptable. Other answers by the Defendant were totally unsupported by the referenced documents that were produced.

This Court has on numerous occasions, both orally at hearings and in its prior orders advised the Defendant of the necessity to comply with the rules of discovery and this Court's orders. The Defendant has not done so. There reaches a point in time when this Court has to act. There are situations where it is justified to impose severe sanctions and this is one of them.

IT IS THEREFORE ORDERED, that:

1. All of Defendant's pleadings are stricken, except for those pleadings related to the Third Party Complaint and the documents and Orders related to the Stipulation to Purge Contempt.

2. No further pleadings or evidence shall be allowed by or on behalf of the Defendant as to matters that were the subject of the Plaintiff's Motion to Compel and this Court's Order Compelling Discovery dated October 9, 2007.

3. The Court reserves jurisdiction to award Plaintiffs attorneys fees and costs.

DONE AND ORDERED in chambers at the Escambia County Courthouse, Pensacola, Florida, this 3rd day of November December 2007

/s/
CIRCUIT JUDGE

✓ Mel
2/4/07

Copies to:
Jeffrey T. Sauer, Esq.
Kathleen K. DeMaria, Esq.
H. Bart Fleet, Esq.
Lisa Jo Spencer, Esq.
Paul Sims
John N.C. Ledbetter, Esq.
Greg Morse, Esq.

APPENDIX E

IN THE CIRCUIT COURT IN AND FOR OKALOOSA COUNTY, FLORIDA

Consolidated Case No. 2000-CA-4075

[Filed August 15, 2007]

SUSAN K. SCHLOTT, et al. and IMOGENE KELLY, et al.,	)
Plaintiffs,	)
v.	)
PAUL SIMS, et al.,	)
Defendants.	)

ORDER PROVIDING PURGE AND RELEASE

THIS CAUSE having come on for hearing on the Defendant, Paul Sims' Amended Motion for Emergency Stay and Motion to Permit Additional Property to Satisfy Purge Provision, and that parties having entered into a stipulation agreeing that the purge provision of the previous Order Adjudging Contempt has been satisfied,

THE COURT finds that Paul Sims has satisfied the purge provision of the Order of Commitment dated

May 30, 2007 by delivering to counsel for Plaintiffs an original duly notarized and witnessed Stipulation that is to be filed in the official records of Okaloosa County, and

IT IS ORDERED that the Okaloosa County Sheriff's Office shall release Paul Sims from further confinement INSTANTER.

DONE AND ORDERED in chambers in Pensacola, Florida, this 7th day of August, 2007.

/s/ Frank L. Bell
FRANK L. BELL

Conformed Copies to:

Lisa Jo Spencer, Esquire
H. Bart Fleet, Esquire
Fleet, Spencer & Kilpatrick, P.A.
1283 Eglin Parkway, Suite A
Shalimar, Florida 32579

Jeffrey T. Sauer, Esquire
Kathleen K. Demaria, Esquire
Smith, Sauer & DeMaria
510 East Zaragoza Street
Pensacola, FL 32502

J. Marshall Gilmore, Esquire
1150 Louisiana Avenue, Suite 4
Winter Park, FL 32789

Stephen A. Pitre, Esquire
CLARK, PARTINGTON, HART,

LARRY, BOND & STACKHOUSE
125 W. Romana Street, Suite 800
Pensacola, FL 32502

APPENDIX F

IN THE CIRCUIT COURT IN AND FOR OKALOOSA COUNTY, FLORIDA

Consolidate Case No. 2000-CA-4075

[Filed August 15, 2007]

SUSAN K. SCHLOTT, et al.,	)
	)
Plaintiffs,	)
	)
and	)
	)
IMOGENE KELLY, et al.,	)
	)
Plaintiffs	)
	)
v.	)
	)
PAUL SIMS, et al.,	)
	)
Defendants.	)
	)

ORDER ON DEFENDANT'S AMENDED MOTION FOR EMERGENCY STAY AND MOTION TO PERMIT ADDITIONAL PROPERTY TO SATISFY PURGE PROVISION

This matter came on for hearing on Defendant's Amended Motion for Emergency Stay and Motion to

Permit Additional Property to Satisfy Purge. Present were counsel for the Plaintiffs and counsel for the Defendant, Paul Sims. Paul Sims was also present by phone. Because of the resolution of the Motion to Permit Additional Property to Satisfy Purge, the Motion for Emergency Stay is moot.

By stipulation of the parties, and upon the due consideration of the Court, it is ordered that:

1. Paul Sims can purge the contempt as set forth in this Court's Order Adjudging Contempt dated May 24, 2007 (as amended by Amended Order Adjudging Contempt dated May 30, 2007) and this Court will order his release from jail upon the due execution and acknowledgment, both individually and as President of S C of Okaloosa Corporation, of the Stipulation to Purge Contempt Order attached hereto.

2. The Stipulation to Purge Contempt Order is found to be reasonable by the Court and the Court adopts the same and incorporates the same as part of this Order.

3. The Amended Order entered May 19, 2004 in this case, including the injunction therein, remains in full force and effect.

DONE AND ORDERED in chambers at the Escambia County Courthouse, Pensacola, Florida, this 7th day of August, 2007.

/s/ Frank L. Bell
FRANK L. BELL, CIRCUIT JUDGE

✓
Mel
8/9/07

Agreed and Copies to:

Jeffrey T. Sauer, Esq. JTS
Kathleen K. DeMaria, Esq. KKD
H. Bart Fleet, Esq. HMF
Lisa Jo Spencer, Esq. LJS
J. Marshall Gilmore, Esq. JMG
Stephen A. Pitre, Esq. SAP

Doc# 2007005236
Book: 1111
Pages: 54
Filed and Recorded
10/19/2007 2:33PM
ALTHEA PEDRO
RECORDER OF DEEDS
ST CROIX

PER PAGE FEE	$ 2.00
CT STAMP FEE	$25.00
ATTACHMNT FEE	$ 9.50
RECORDING FEE	$25.00

/s/ Althea A. Pedro
Recorder

IN THE CIRCUIT COURT IN AND FOR OKALOOSA COUNTY, FLORIDA

Consolidated Case No. 2000-CA-4075

[Filed August 8, 2007]

SUSAN K SCHLOTT, et al. and IMOGENE KELLY, et al.,	)
Plaintiffs,	)
v.	)
PAUL SIMS, et al,	)
Defendants.	)

STIPULATION TO PURGE CONTEMPT ORDER

The Plaintiffs and Defendants, by and through the undersigned attorneys, hereby stipulate to the entry of the following ORDER.

1. The attorneys for the Plaintiffs shall establish a designated interest bearing account at Gulf Coast Community Bank as a designated depository in the name of Paul Sims ("Sims"). The account shall have the same terms and restrictions typically placed upon a guardianship designated account, requiring a court order before any funds can be withdrawn from the account.

2. On this 7th day of August, 2007, Defendants shall file and pursue, at Defendants' expense, a third party

action within these proceedings, suing Michael R. Ravelo and such other parties deemed appropriate, to recover the monies and other assets of Defendants which Ravelo is in possession of or controls. The amount of monies seeking to be recovered shall be not less than $434,033.58. Such lawsuit shall include an ex parte temporary injunction pursuant to the Court's instruction of August 7, 2007. The funds, so recovered shall be immediately placed in the designated depository as provided above.

3. Defendants have acknowledged that Paul Sims' son, Randy Sims, is currently holding $16,000 which Paul Sims received from the Mare Creek project. Paul Sims hereby directs Randy Sims to transfer said amount to Marshall Gilmore and Steve Petre to be applied to Defendants' legal fees and obligations associated with this case.

4. Sims hereby grants to the Plaintiffs a pre-judgment lien on the entire balance of the equity as to the following real estate located in Jackson County, Florida:

See Exhibit "A", attached hereto

5. Sims hereby grants to the Plaintiffs a pre-judgment lien on the entire balance of the equity as to the following real estate located in Okaloosa County Florida:

See Exhibit "B", attached hereto

6. Sims hereby grants to the Plaintiffs a pre-judgment lien on the entire balance of the equity

as to the following real estate located in St. Croix, United States Virgin Islands:

St. Croix Condo Tax ID 2-01400-0438-12
Granada Del Mar #211
Christianhead St. Croix, VI 00840

7. Sims hereby grants to the Plaintiffs a pre-judgment lien on the entire balance of the equity, if any, as to the following tangible personal property:

1977 Piper Navajo CR
Registration N711LR
Serial No. 31-771208

1988 Coachman 37' Motor Home
VIN 3FCMF53G3VJA27981
Title #76075292

8. Sims hereby grants to the Plaintiffs a pre-judgment lien on the entire balance of the equity as to the following intangible personal property: Sims' ownership interests, being either legal or equitable, in any and all business interests which he may own, including but not limited to:

> SC of Okaloosa Corporation, Hidden Springs, LLC, Woodholdings Environmental, Inc., Deerland Development Corporation, Two Eagles, Inc., and/or Mare Creek Development Corp.

9. Upon proof of the filing of said lawsuit, and the original of this document being properly executed and delivered to Plaintiffs' attorney, Plaintiffs' attorney shall contract Judge Bell confirming that Mr. Sims has

satisfied his purge requirements of the Contempt Order entered in the above styled case.

10. Sims shall sign such documents as are necessary to perfect their pre-judgment liens and failing to do so, Sims shall be deemed in contempt of this Court.

11. The May 19, 2004 Amended Order, issued in this case and which was the subject of the Contempt Order, shall remain in full force and effect.

12. If Sims prevails in this case, the pre-judgment liens hereby established shall be deemed vacated and of no further effect.

13. Sims has entered into this stipulation for the purpose of purging the Contempt Order and it is not ad admission by Sims that the Plaintiffs are entitled to such funds or assets.

Witnesses as to S C of Okaloosa Corporation and Paul Sims individually

/s/ J. Marshall Gilmore
Witness: J. Marshall Gilmore

/s/ Stephen A. Pitre
Witness: Stephen A. Pitre

SC of Okaloosa Corporation

By: /s/ Paul Sims
Paul Sims, its President

/s/ Paul Sims
Paul Sims, individually

STATE OF FLORIDA
COUNTY OF OKALOOSA

The foregoing instrument was acknowledged before me this 7th day of August, 2007, by Paul Sims, individually and as the president of SC of Okaloosa Corporation, who has produced ___ as identification or is personally known to me.

[SEAL] /s/ Edna M. Keefe
Notary Public
Commission Expires:

/s/ J. Marshall Gilmore
J. Marshall Gilmore
Florida Bar NO. 084181
1150 Louisiana Avenue, Suite 4
Winter Park, FL 32789
(407) 629-7322
Attorney for Defendants

/s/ H. Bart Fleet
H. Bart Fleet
Florida Bar No. 0606900
Fleet, Spencer & Kilpatrick, P.A.
1283 Eglin Parkway, Suite A
Shalimar, FL 32579
(850) 651-4006
Attorney for Plaintiffs

/s/ Kathleen K. DeMaria
Kathleen K. DeMaria
Florida Bar No. 503789

Smith, Sauer & DeMaria
510 East Zaragoza Street
Pensacola, FL 32502
(850) 434-2761
Attorney for Plaintiffs

/s/ Jeffrey T. Sauer
Jeffrey T. Sauer
Florida Bar No. 149010
Smith, Sauer & DeMaria
510 East Zaragoza Street
Pensacola, FL 32502
(850) 434-2761
Attorney for Plaintiffs

AUG 07 2007 TUE 02:01 PM FLEET SPENCER
FAX NO. 850 651 5006 P. 03

EXHIBIT "A"

PARCEL 1: O.R. BOOK 779 PAGE 0525
O.R. BOOK 239 PAGE 0479

A) One (1) acre in the Southwest (SW) corner of the Southeast quarter (SE 1/4) of the Northeast quarter (NE 1/4), Section 31, Township 5 North, Range 11 West.

B) Beginning 70 yards North of the Southwest Corner of the Southeast 1/4 of the Northeast 1/4 Section 31. Township 5 North of Range 11 West; thence 95 feet North; thence 75 East; thence 95 feet South; thence 75 feet West to point of beginning.

C) Also a part of a 210 foot strip beginning at Southeast corner of lot conveyed by M. L. Dekle et ux to W. J. Johnson et al., dated March 1, 1911 and recorded in Book 56, Page 315 Public Records of Jackson County, Florida, thence Est 135 feet, thence North 95 feet, thence West 135 feet, thence South 95 feet to point of beginning; adjoining the land first described.

PARCEL 2:

Commence at the Northwest corner of the Southeast 1/4 of Section 11, Township 6 North, Range 12 West, Jackson County, Florida; thence North 00 degrees 47' 22" West, along the West line of the Southwest 1/4 of the Northeast 1/4 of said Section 11, a distance of 1159.75 feet to the South right of way line railroad;

thence South 89 degrees 34' 45" East along said right of way, 377.57 feet to a point of curve of a curve concave Southwesterly and having a radius of 332.39 feet; thence Southeasterly along said right of way and arc of said curve, through a central angle of 09 degrees 13' 53", an arc distance of 214.57 feet to the Point of Beginning; thence continue along said right of way and the arc of said curve, through a central angle of 74 degrees 21' 19", an arc distance of 1729.10 feet to the end of said curve, thence continue along said right of way the following courses; South 06 degrees 49' 12" East, 226.29 feet; thence South 01 degrees 53' 22" East, 237.38 feet; thence North 88 degrees 01' 28" East, 50.00 feet; thence South 01 degrees 58' 32" East, 805.95 feet to the North right of way of Over Pass Road; thence South 86 degrees 28' 17" West, along said right of way, 363.32 feet to a point of curve of a curve concave Southeasterly and having a radius of 160.00 feet, thence Southwesterly along said North right of way and the arc of said curve, through a central angle of 25 degrees 46' 23", an arc distance of 71.97 feet; thence departing said right of way and run South 89 degrees 16' 36" West, 473.64 feet; thence North 00 degrees 17' 16" East, 801.99 feet, thence North 89 degrees 44' 22" West, 266.71 feet; thence North 00 degrees 15' 38" East, 1427.09 feet to the Point of Beginning.

EXHIBIT "B"

OKALOOSA COUNTY PROPERTY:

CONDOMINIUM PARCEL; UNIT NUMBER, UNIT 650

JADE EAST TOWERS, a CONDOMINIUM, all as set forth in the Declaration of Condominium and the Exhibits annexed thereto and forming a part thereof, as recorded in Official Records Book 1983, Page 223, as amended by that certain Amendment to Declaration of Condominium recorded in Official Records Book 2076, Page 1473 all in the Public Records of Okaloosa County, Florida, and as many be amended from time to time. Together with all of its appurtenances according to the Declaration of Condominium. Subject, however, to all of the provisions of the Declaration of Condominium.

APPENDIX G

IN THE CIRCUIT COURT IN AND FOR OKALOOSA COUNTY, FLORIDA

CASE NO. 2000 CA 4075

[Filed June 4, 2007]

SUSAN K SCHLOTT, et al. and IMOGENE KELLY, et al.,	)
Plaintiffs,	)
vs.	)
PAUL SIMS, et al.,	)
Defendants.	)

AMENDED ORDER OF COMMITMENT

Paul Sims is hereby committed for (6) months for contempt to be served in the Okaloosa County Jail. Paul Sims may purge himself from the six (6) months by the payment of $1.5 Million Dollars to the registry of the court, Okaloosa County Clerk's Office.

Paul Sims surrenders himself to the Escambia County Sheriff's Office to be held until the Okaloosa County Sheriff's Department transports him to the Okaloosa County Jail to serve his sentence.

The Court upon notice that the purge amount has been paid will prepare an Order of Discharge.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida, this 31st day of May, 2007.

/s/ [illegible]
for FRANK L. BELL
CIRCUIT JUDGE

Copies furnished to:

Larry Cackley, Director
Okaloosa County Jail
Escambia County Sheriff's Office
Lisa Joe Spencer, Esquire
H. Bart Fleet, Esquire
Jeffrey T. Sauer, Esquire
Kathleen DeMaria, Esquire
J. Marshall Gilmore, Esquire
Stephen A. Pitre, Esquire

CERTIFIED A TRUE
AND CORRECT COPY
DON W. HOWARD [SEAL]
CLERK CIRCUIT COURT
BY /s/
DEPUTY CLERK
DATE 5/31/07

IN THE CIRCUIT COURT IN AND FOR
OKALOOSA COUNTY, FLORIDA

CASE NO. 2000 CA 4075

[Filed June 1, 2007]

SUSAN K SCHLOTT, et al. and IMOGENE KELLY, et al.,	)
Plaintiffs,	)
v.	)
PAUL SIMS, et al.,	)
Defendants.	)

ORDER OF COMMITMENT

Paul Sims is hereby committed for six (6) months for contempt to be served in the Okaloosa County Jail. Paul Sims may purge himself from the six (6) months by the payment of $1.5 Million Dollars to the registry of the court, Okaloosa County Clerk's Office.

Paul Sims surrenders himself to the Escambia County Sheriff's Office to be held until the Okaloosa County Jail transports him for commitment.

The Court upon notice that the purge amount has been paid will prepare an Order of Discharge.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida, this 30 day of May, 2007.

/s/ Frank L. Bell
for FRANK L. BELL
CIRCUIT JUDGE

Copies furnished to:

Larry Caskey, Director
Okaloosa County Jail
Escambia County Sheriff's Office
Lisa Joe Spencer, Esquire
H. Bart Fleet, Esquire
Jeffrey T. Sauer, Esquire
Kathleen DeMaria, Esquire
J. Marshall Gilmore, Esquire
Stephen A. Pitre, Esquire

Post-it Fax Note 7871	Date 7/31/07	# of Pages: 1
To Debbie	From [illegible]	
Co./Dept. Okaloosa Warrants	Co. Esc. Co. SO	
Phone #	Phone # 850-436-9447	
Fax # 850-609-2086	Fax #	

Sent: 2007-05-31 09:46:53
MNE HDR: S46000231
TEST IND HDR: N
MKE: FAM
ORI: FL04600A1
MNE-FAM: S17000018
SUB: 18
MIS-TEXT: ATTN: ESCAMBIA CO SO

RE: SIMS, PAUL WM 11-25-19

UPON REVIEW OF THIS CIVIL CONTEMPT ORDER, YOUR JUDGE FRANK BELL IS THE ISSUING JUDGE ON THIS ORDER. IT DIRECTS SUBJECT TO SERVE 6MONTHS JAIL SENTENCE IN THE ESCAMBIA CO OR PAY THE FINE AMOUNT. ORDER DOES NOT DIRECT SUBJECT TO SERVE TIME IN OKALOOSA COUNTY.

A COPY OF THIS ORDER WAS FAXED TO PEGGY WITH YOUR CIVIL PROCESS DIVISION YESTERDAY, A CERTIFIED ORDER WAS SENT US MAIL ALSO.

IF FURTHER INFORMATION IS NEEDED, PLEASE CONTACT DANNY LUKE AT THE OKALOOSA CO CLERKS OFFICE AT 850-651-7200 EXT 4303.

THANK-YOU.

AUTH; DEBBIE NICHOLS OKALOOSA COSO WARRANTS 850-651-7432

Received: 2007-05-31 10:10:38 MSG NBR: 00005
MNE: S46000231
ATTN: SYSTEM GENERATED HEADER

--FLORIDA ADMINISTRATIVE MESSAGE --

FROM: S17-00-0015
TO: S46-00-0231
SUBJECT: ROUTINE MESSAGE

TO: OKALOOSA CO SO/WARRANTS
FROM: ESCAMBIA CO SO/CIVIL
RE: PAUL SIMS, W/M
REF TTY SENT. JUDGE BELL ISSUED AN ORDER OF COMMITMENT DATED 05/30/07 STATING SUBJECT COMMITTED FOR 6 MONTHS TO BE SERVED IN THE OKALOOSA COUNTY JAIL OR PAY THE FINE AMOUNT. WILL FAX COPY OF ORDER.
IF YOU HAVE ANY QUESTIONS PLEASE CALL.
PENSACOLA, FL
OPR--FP.FOLMAR
(850) 436 9447

- END

APPENDIX H

IN THE CIRCUIT COURT IN AND FOR OKALOOSA COUNTY, FLORIDA

Consolidated Case No. 2000-CA-4075

[Filed May 24, 2007]

SUSAN K. SCHLOTT, et al. and IMOGENE KELLY, et al.,	)
Plaintiffs,	)
v.	)
PAUL SIMS, et al,	)
Defendants.	)

ORDER ADJUDGING CONTEMPT

THIS CAUSE having come on for hearing on the Plaintiffs' Motion for Order to Show Cause, and the Court having considered such and being otherwise fully advised in the premises, the Court finding that the Defendant, Paul Sims, willfully, deliberately and corruptly violated the Court's May 19, 2004 Amended Order and transferred in excess of one million five hundred thousand dollars ($1,500,000,00+) without obtaining Court approval and that the Defendant, Paul Sims, has the financial resources available to him that

he can pay the wrongfully transferred amounts into the registry of the Court in the amount of one million five hundred thousand dollars ($1,500,000.00).

IT IS ADJUDGED THAT:

1. Defendant, Paul Sims is in contempt of court for transferring in excess of one million five hundred thousand dollars ($1,500,000.00) in violation of the Court's May 19, 2004, Amended Order in this action.

2. Defendant shall have until 9:00 a.m. (C.D.S.T.), May 30, 2007, to pay one million five hundred thousand dollars ($1,500,000.00) into the registry of the Court of Okaloosa County, Florida.

3. If Defendant fails to pay the one million five hundred thousand dollars ($1,500,000.00) into the registry of the Court before that time, he shall surrender himself at 9:00 a.m. (C.D.S.T.) to the Honorable Frank L. Bell, in chambers, 190 Governmental Center, Sixth Floor, Pensacola, Florida, Escambia County, Florida to be held in the Escambia County Jail for six (6) months or until such time as he has paid the purge amount into the registry of the Court.

4. Defendant shall be permitted, pursuant to the attached Prejudgment Lien, to obtain a credit in the amount of three hundred thousand dollars ($300,000.00) toward the one million five hundred thousand dollars ($1,500,000.00) that is to be paid into the registry of the Court. The

Pre-Judgment lien shall be filed in the court record.

5. If Defendant fails to either pay the one million five hundred thousand dollars ($1,500,000.00) or to file a Pre judgment lien on that certain property described therein and to pay the remaining monetary amount of one million two hundred thousand dollars ($1,200,000.00) into the registry of the court and if the Defendant fails to turn himself in as delineated above, the Court will strike all pleadings filed by Defendant in this action, and the matter will proceed directly to judgment. Additionally, the Court will issue a bench warrant for Defendant's arrest for his failure to pay the funds into the court registry or to surrender himself as stated above.

6. The Defendant has the present ability to pay the stated amounts into the registry of the Court.

7. The Amended Order entered May 19, 2004 in this case, including the injunction therein, remains in full force and effect.

8. The Court retains jurisdiction to award attorneys' fees.

DONE AND ORDERED in chambers at the Escambia County Courthouse Annex, Pensacola, Florida, this 24th day of May, 2007.

/s/ Frank L. Bell
JUDGE FRANK L. BELL

CLERKS CERTIFICATE OF MAILING

I HEREBY CERTIFY, that a true and correct copy of the foregoing has been furnished to:

Lisa Jo Spencer, Esquire and
H. Bart Fleet, Esquire
Fleet, Spencer & Kilpatrick, P.A.
1283 Eglin Parkway, Suite A
Shalimar, Florida 32579

Jeffrey T. Sauer, Esquire and
Kathleen K. DeMaria, Esquire
Smith, Sauer & DeMaria
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J. Marshall Gilmore, Esquire
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CLARK, PARTINGTON, HART,
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Pensacola, FL 32502

Don Howard, Clerk of the Court

BY /s/ K. Sims [SEAL]
Deputy Clerk of the Court
5-25-07

APPENDIX I

FILED FOR RECORD- ANDERSON COUNTY TX
Inst #: 04052298 on 06/28/2004 at 03:15:00 PM

IN THE CIRCUIT COURT IN AND FOR OKALOOSA COUNTY, FLORIDA

Consolidate Case No. 2000-CA-4075

[Filed May 19, 2001]

SUSAN K. SCHLOTT, et al	)
	)
Plaintiffs,	)
	)
v.	)
	)
IMOGENE KELLY, et al	)
	)
Defendants.	)
	)

AMENDED ORDER REMOVING TRUSTEE, PAUL SIMS AND APPOINTING SUCCESSOR TRUSTEE(S)

This matter came on for hearing on Plaintiffs' Motion for Summary Judgment and the Court finding that Paul Sims, as Trustee of the Mattie M. Kelly 908 Trust dated March 27, 1992 (the "908 Trust"), and as Trustee of the Mattie M. Kelly Land Trust dated October 1, 1992 (the "Land Trust") has violated his

fiduciary duties as trustee on numerous occasions, including but not limited to:

A. Borrowing over $2,600,000.00 from the trusts for his own personal use under non-recourse terms.

B. Causing the trust to be liable for a $3,650,000.00 note as to property in which the trust had no interest.

C. Pledging at least $2,000,000.00 of trust assets to secure the debt of S C of Okaloosa Corporation, a company wholly owned and controlled by him personally.

D. Using trust assets for the furtherance of his own personal gain either directly or indirectly through his wholly owned and controlled company, S C of Okaloosa Corporation.

The Court further finds that since Paul Sims claims that S C of Okaloosa Corporation was acting as the agent of the trusts, and since S C of Okaloosa Corporation is solely owned and controlled by Paul Sims individually, then the Court has jurisdiction over it through Paul Sims individually, who by reason of consolidation is a party to this action.

The Court further finds that if Daniel C. Perri were appointed as the successor trustee of these trusts, Mr. Perri also has a conflict of interest in that he was counsel for Paul Sims during the time several of the activities occurred that give rise to Paul Sims removal and that Mr. Perri's company is a debtor to at least one of the trusts. The Court further finds that AmSouth Bank if appointed successor trustee would also have a conflict in that it is a lender to at least one of the

trusts. And the Court further finding that the majority of the beneficiaries, including Imogene Kelly, have agreed as to the successor trustee(s) for each trust.

THEREFOR, IT IS ORDERED AND ADJUDGED, that:

1. Paul Sims is removed, effectively immediately, as trustee of the 908 Trust and as trustee of the Land Trust.

2. **Kathleen K. DeMaria and H. Bart Fleet** are appointed as interim successor trustees for the 908 Trust and as interim successor trustees for the Land Trust. The successor trustees named in this paragraph shall not be liable or responsible for any of the prior actions or inactions of Paul Sims, as Trustee of these trusts. As to any out of state assets to which a trustee may have any claim, the successor trustee(s) is/are authorized to appoint a special trustee as to that asset.

3. Paul Sims shall immediately turn over to the successor trustee(s) all trust assets and records for both trusts and shall cooperate and communicate with the successor trustee(s) in bringing the successor trustee(s) up to speed as to all matters currently pending with the trusts. Within ten (10) days of this date, Paul Sims individually shall answer the eleven (11) interrogatories propounded upon him, as trustee of each of the trusts, by Plaintiffs as to the collateral and security for the debts owed to the trusts and encumbrances on the assets of the trusts.

4. Except upon further order of this Court, Paul Sims and S C of Okaloosa Corporation are enjoined, effective immediately, from selling, leasing, transferring,

pledging, hypothecating, releasing, gifting, devising, or otherwise relinquishing any control over, any asset owned by him individually or by S C of Okaloosa Corporation or by any other business entity in which Paul Sims or S C of Okaloosa Corporation is the sole shareholder, member or general partner, where that business entity has had any benefit or use directly or indirectly of any trust asset. Except upon further order of this Court, Paul Sims and S C of Okaloosa Corporation are further enjoined, effectively immediately, from taking any action as an interest owner in any business entity that would allow that business entity to sell, lease, transfer, pledge, hypothecate, release, gift, devise, or otherwise relinquish any control over any asset owned by that business entity where that business entity has had any benefit or use directly or indirectly of any trust asset.

5. This Court retains jurisdiction for the award of attorney's fees and costs against Paul Sims individually, and if it is determined that the trusts have suffered any losses by reason of Paul Sims' actions in breaching his fiduciary duty, then for the award of damages, and for such further orders and relief as are proper.

Done and ordered this 19 day of May, 2004.

/s/
CIRCUIT JUDGE

5-19-04
KIA

Copies to
Jeffrey T. Sauer, Esq.

Kathleen, K. DeMaria, Esq.
H. Bart Fleet, Esq.
G. R. Erick Mead, II, Esq.

RETURN TO
FLEET SPENCER MARTIN & KILPATRICK PA
ATTN: BRANDY
1104 EGLIN PARKWAY
SHALIMAR, FL 32579

CERTIFIED [ ]
BY: Kelly J. [ ]
DEPUTY CLERK
DATE: 05-19-04

APPENDIX J

DISTRICT COURT OF APPEAL,
FIRST DISTRICT
301 S. Martin Luther King, Jr. Blvd.
Tallahassee, Florida 32399-1850
Telephone No. (850) 488-6151

December 15, 2009

CASE NO.: 1D08-4772
L.T. No.: 2000-CA4075

Paul Sims	)
Appellant/Petitioner(s),	)
	)
v.	)
	)
Susan K. Schlott, Et Al	)
And Imogene, Etc. Et Al.	)
	)
Appellee/Respondent(s).	)
	)

BY ORDER OF THE COURT:

Appellant's motion filed November 30, 2009, for rehearing or written opinion is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

John N. C. Ledbetter
H. Bart Fleet
Jeffrey T. Sauer

Samuel B. Taylor
Kathleen Kies Demaria

Lisa J Spencer
Louis K. Rosenbloum

/s/ Jon S. Wheeler [SEAL]
JON S. WHEELER, CLERK

APPENDIX K

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CASE NO. 1D04-2673

[Filed October 14, 2004]

PAUL SIMS,	)
	)
Appellant,	)
	)
vs.	)
	)
IMOGENE KELLY, KENT E. AMOS, et al.,	)
	)
Appellees.	)
	)

ON APPEAL FROM THE CIRCUIT COURT OF OKALOOSA COUNTY, FLORIDA – LOWER TRIBUNAL NO. 2000-CA-4075

APPELLEES' ANSWER BRIEF

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Attorneys for Appellees

* * *

SUMMARY OF ARGUMENT

I. Removal of Trustee and Appointment of Interim Successor Trustees

This court does not have jurisdiction to review the portion of the May 19, 2004 summary judgment order which removed Sims as trustee and appointed interim successor trustees because (1) the order removing Sims as trustee for breach of fiduciary obligation is not an appealable final order because the trial court reserved jurisdiction to determine the beneficiaries' damages; (2) although the injunctive provision in the May 19 order (paragraph four) is reviewable by non-final appeal pursuant to Fla. R. App. P. 9.130(a)(3)(B), the court's jurisdiction is limited to that portion of the order; and (3) the portion of the May 19 order removing the trustee and appointing interim successor trustees is not an injunction; it is an order entered pursuant to section 737.201(1), Florida Statutes.

On the merits, the summary judgment removing Sims as trustee was correct because the undisputed evidence shows that the trustee has engaged in a pattern of self-dealing for personal gain by making loans to himself and his alter ego corporation and pledging trust assets as security for his personal investments which in some cases have yielded millions of dollars in profits to Sims personally at the expense of the trust. Additionally, Sims made these self-dealing transactions without obtaining court approval required by section 737.403(2), Florida Statutes.

Sims' argument that SCO was formed as an "investment agent" to protect the trust from litigation and earn the trust ten percent interest on investments does not preclude summary judgment, even if true. First, Sims failed to comply with section 518.112(3)(b), Florida Statutes, which requires the trustee to give the beneficiaries written notice of his intent to employ an investment agent. Second, some of the self-dealing loans were executed by Sims personally, not SCO. Third, when a trustee loans trust assets to himself or his corporation, a conflict of interest arises even if the loans are made in good faith or under special circumstances.

Sims does not have standing to contest the appointment of DeMaria and Fleet as interim successor trustees because he is not a trust beneficiary and has no interest in trust property. In any event, the trial court did not abuse its discretion in appointing two of the beneficiaries' attorneys as interim successor trustees because prompt action was required to protect trust assets and it appeared to the trial court that the successor trustees named in the trusts were unable or unwilling to serve.

II. Injunctive Provisions and Jurisdiction Over SCO

Based on settled principles of equity, the beneficiaries have the right to pursue trust assets wrongfully diverted by the trustee. Following these principles, the trial court properly exercised its discretion by granting the injunctive relief contained in paragraph four of the May 19 order to prevent trust assets in the hands of Sims and SCO from being transferred to bona fide purchasers for value or

otherwise being placed beyond the reach of the beneficiaries. The entry of the order did not violate the dictates of the Perlow case because the record indicates that Sims' attorney had ample time to consider the proposed order, voiced no objection and did not request additional time for review. In granting the injunction, the trial court was not required to order a bond or make the findings required for temporary injunctions because the injunction is permanent.

Assuming Sims has standing to complain, the issue of jurisdiction over SCO is moot because SCO filed an appearance below which clearly was not a special appearance limited to jurisdiction. Enjoining SCO was not an abuse of discretion because an injunction not only binds the parties but also their privies and others identified with their interest. Sims conceded that he and SCO are the same.

III. July 13, 2004 Order

The court does not have jurisdiction to review the July 13 order because (1) review by non-final appeal is limited to the order designated in the notice of appeal, here, the May 19 order (2) the court's jurisdiction does not extend to orders entered after rendition of the order under review; (3) Sims has filed a separate appeal to review the July 13 order and (4) the trial court in the July 13 order merely continued the matter without ruling on Sims' motion to modify or dissolve the injunction. Thus, there is no ruling to appeal. On the merits, the trial court did not abuse its discretion by declining Sims' request to modify or dissolve the injunction instanter without further hearing.

* * *

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(2)

No. 09-1399

Supreme Court, U.S.
FILED
JUN 16 2010
OFFICE OF THE CLERK

In The

Supreme Court of the United States

PAUL SIMS,

Petitioner,

v.

SUSAN SCHLOTT, et al.,

Respondents.

On Petition For Writ Of Certiorari To The District Court Of Appeal, First District, State Of Florida

BRIEF IN OPPOSITION

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RESPONDENTS' COUNTER-STATEMENT OF QUESTIONS PRESENTED

The questions presented by petitioner for review are based in large part on the erroneous assumption that the state court judges involved in the trial court proceedings were "confused" or uncertain about the meaning of the summary judgment and injunction entered on May 19, 2004, by the Okaloosa County, Florida, Circuit Court, and affirmed by Florida's District Court of Appeal, First District. Because the order is unambiguous, respondents have reframed the questions presented as follows:

1. Whether the Florida state court afforded petitioner due process of law when it held him in civil contempt and incarcerated him for willfully violating the trial court's injunction which prohibits petitioner from transferring assets without court approval and struck his pleadings for willful and repeated violations of discovery orders.

2. Whether the Florida appellate court's affirmance of the final judgment without written opinion violated petitioner's right to due process of law.

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STATEMENT OF THE CASE

Petitioner's jurisdictional argument is based on several factual assumptions and representations concerning the proceedings conducted in the state trial and appellate courts which are either incorrect or incomplete.

Summary Judgment Order. Petitioner repeatedly argues that the summary judgment order entered by the Okaloosa County, Florida, Circuit Court on May 19, 2004 (Petitioner's Appendix I), was "unclear" and "confusing," particularly on the question whether the injunction contained in the order applies to petitioner's personal assets. *See* Petition for Certiorari at 4, 10, 22. Every provision of the order, however, is crystal clear, leaving no doubt or uncertainty as to the issues resolved by summary judgment and the scope of the injunction. Specifically, the trial court found from undisputed facts presented by motion for summary judgment that petitioner, who was trustee of the Mattie Kelly 908 Trust and Mattie Kelly Land Trust,

> violated his fiduciary duties as trustee on numerous occasions, including but not limited to:
>
> A. Borrowing over $2,600,000.00 from the trusts for his own personal use under non-recourse terms.
>
> B. Causing the trust to be liable for a $3,650,000.00 note as to property in which the trust had no interest.

C. Pledging at least $2,000,000.00 of trust assets to secure the debt of S C of Okaloosa Corporation, a company wholly owned and controlled by him personally.

D. Using trust assets for the furtherance of his own personal gain either directly or indirectly through his wholly owned and controlled company, S C of Okaloosa Corporation.

(Petitioner's Appendix I at 47a-47b). Based on these findings, the trial court immediately removed petitioner as trustee of both trusts, appointed interim successor trustees and ordered petitioner to answer past due discovery. (Petitioner's Appendix I at 48a). The trial court also retained jurisdiction to determine respondents' damages caused by petitioner's breach of trust. (Petitioner's Appendix I at 49a).

The summary judgment order also includes a permanent injunction directed to petitioner and S C of Okaloosa Corporation[1] which prevents petitioner from disposing of trust assets or his personal assets without court approval:

> Except upon further order of this Court, Paul Sims and S C of Okaloosa Corporation are enjoined, effective immediately, from selling,

---

[1] S C of Okaloosa Corporation is petitioner's solely-owned corporation. Petitioner suggests in his petition for certiorari that S C of Okaloosa was not his alter ego. Petitioner testified during his discovery deposition, however, that he and S C of Okaloosa are "the same thing."

> leasing, transferring, pledging, hypothecating, releasing, gifting, devising, or otherwise relinquishing any control over, any asset owned by Sims individually or by S C of Okaloosa Corporation or by any other business entity in which Sims or S C of Okaloosa Corporation is the sole shareholder, member or general partner, where that business has had any benefit or use directly or indirectly of any trust asset.

(Petitioner's Appendix I at 48b-48c).

Damages Sustained by the Trusts and Beneficiaries. Petitioner incorrectly represents to the Court that the trusts and beneficiaries were not damaged by his improper self-dealing with trust assets. *See* Petition for Certiorari at 7, 19, 20. Although the successor trustees recouped several million dollars which petitioner improperly borrowed from the trusts, the record shows that petitioner personally pocketed over $6 million in profits by self-dealing with trust assets, profits which rightfully belonged to the trusts. (Petitioner's Appendix B at 6a).

REASONS FOR DENYING THE PETITION

I. The state court judgment does not raise an important federal question.

The Court's authority to issue writs of certiorari to review state court judgments extends only to those judgments which raise important federal questions.

See 28 U.S.C. § 1257. Although petitioner cites the United States Constitution, the petition for certiorari filed in this case presents nothing more than an unauthorized challenge to a final judgment entered and affirmed by state courts based on settled principles of state law. Indeed, for the most part, the arguments raised in the petition for certiorari are the same state law arguments the Florida courts repeatedly rejected out of hand.[2] As such, this Court should deny the petition for certiorari for lack of federal question. *See Michigan v. Long*, 463 U.S. 1032, 1038-39 (1983).

II. The state courts which incarcerated petitioner for civil contempt for willfully violating an injunction and struck his pleadings for repeated discovery violations afforded petitioner due process of law.

A. Civil Contempt

Concerning petitioner's incarceration for civil contempt, the record indicates the state trial and appellate courts below afforded petitioner due process of law at every stage of the proceedings.[3] Moreover,

[2] The state law issues which dominate the petition for certiorari in this case include rulings on the scope of respondents' pleadings, law of the case, agency, trustee's standard of care, and the beneficiaries' measure of damages for petitioner's breach of trust.

[3] Petitioner's argument that the state courts denied him equal protection and violated the Eighth Amendment prohibition

(Continued on following page)

petitioner fails to candidly disclose to this Court the compelling facts which justified his incarceration.

By 2006, the trust beneficiaries learned petitioner had been transferring assets without court approval in direct violation of the 2004 permanent injunction. In response, the beneficiaries filed motions to hold petitioner in contempt for expending almost $100,000 without court approval, including substantial payments to one of petitioner's companies engaged in real estate development. The trial court issued an order to show cause directing petitioner to appear and answer the allegations on October 10, 2006.

Facing a finding of contempt, petitioner halted the state court proceedings by filing petitions for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Southern District of Florida on behalf of himself and S C of Okaloosa on the same day as the previously scheduled show cause hearing. *See In re Sims*, Case No. 06-15077 (Bankr. S.D. Fla. 2006). The beneficiaries moved to dismiss the bankruptcy cases on the ground petitioner filed the

---

against excessive bail and cruel and unusual punishment was never raised and decided in the lower courts and thus is not properly before the Court. *See Adams v. Robertson*, 520 U.S. 83, 86 (1997) ("With 'very rare exceptions,' . . . we have adhered to the rule in reviewing state court judgments under 28 U.S.C. § 1257 that we will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review.").

petitions in bad faith. As explained by the beneficiaries' bankruptcy attorney at the April 9, 2007 evidentiary hearing on the motion to dismiss:

> Mr. Sims disobeyed, vigorously disobeyed court orders which, recalcitrant in the judicial process, was about to be sanctioned for that conduct, and now he comes to this court with unclean hands, with an intention to – with a stated intention to reorganize; however, notwithstanding the fact he's a debtor-in-possession in this case, he hasn't filed a single debtor-in-possession report. He's made postpetition transfers. He's failed to disclose prepetition transfers.

Confronted by evidence damaging to his petitions and his credibility, petitioner admitted during the evidentiary hearing he failed to disclose on his bankruptcy schedule at least $45,000 in cashiers' checks located in his safe deposit box and further admitted giving false testimony during an earlier meeting of creditors about the contents of his safe deposit box.

Even more striking, petitioner revealed during his testimony in bankruptcy court that he transferred, without approval from the Okaloosa County court which had issued the injunction, over $1 million during 2006 to Atlantis Mariner 1 Line, Inc., a company owned by a Miami businessman named Michael Ravelo. Petitioner never offered the bankruptcy court an adequate explanation for the transfer, testifying vaguely that he gave Ravelo the funds without an agreement for repayment "[j]ust to take care of my

expenses and also to invest in whatever he has." Petitioner's relationship with Ravelo was tenuous at best; petitioner testified he knew the man only for a few months through a mutual acquaintance before giving him over $1 million. Not surprisingly, petitioner voluntarily dismissed his bankruptcy cases before the hearing ended.

During a subsequent deposition, Ravelo produced schedules confirming petitioner transferred a total of $1,553,073.66 to Atlantis Mariner/Ravelo during 2006, and showing Atlantis Mariner/Ravelo distributed from these funds by check or wire transfer $1,119,040.08 to various payees (including $325,000 directly to petitioner), leaving a balance of $434,033.58. In a third-party complaint petitioner subsequently filed against Ravelo in the state court action, petitioner admitted under oath he funneled over $1.5 million to Ravelo as part of a scheme designed to protect petitioner's assets "from the Kelly heirs' litigation and the Circuit Court of Okaloosa County." Petitioner explained the conspiracy in his sworn pleading as follows:

> 12. Ravelo promoted his plan to Sims whereby Judge Swanson's Order would be negated and where Sims could avoid the costly and destructive litigation with the Kelly heirs. Primarily, Ravelo's scheme involved enticing Sims to move to southern Florida, engage attorneys selected by Ravelo who would "take over" the Kelly Heirs litigation and prepare for a Chapter 11 filing, then engage bankruptcy attorneys selected

> by Ravelo who would file the Chapter 11, and move all of the heirs litigation in Okaloosa County, Florida into bankruptcy court in southern Florida.

With information obtained from the bankruptcy court and Ravelo, the beneficiaries supplemented their motion for contempt. Even though the permanent injunction prohibits petitioner and S C of Okaloosa "from . . . relinquishing any control over, any asset owned by Sims individually or by S C of Okaloosa Corporation" without court approval, the supplemented motion for contempt described hundreds of transactions executed by petitioner and S C of Okaloosa without court approval, all in direct violation of the injunction.

With the bankruptcy stay lifted and adequate notice provided to petitioner, the trial court conducted the show cause hearing on May 17, 2007. After receiving testimony from petitioner and his attorney, the trial court concluded from the undisputed evidence petitioner willfully violated the injunction by transferring $2,817,957 in assets without court approval, including over $1.3 million to Ravelo's company, Atlantis Mariner. In the order adjudging petitioner in contempt, the trial court made the necessary finding of willfulness and set the purge amount based on the evidence at $1.5 million payable by May 30, 2007, failing which the order required petitioner to surrender for incarceration. (Petitioner's Appendix H).

Apparently unwilling to satisfy the purge amount, petitioner was incarcerated on May 30, 2007. On June 15, 2007, petitioner voluntarily offered certain assets as security to satisfy the purge provision in the contempt order. The beneficiaries accepted his offer with certain modifications. At a hearing to approve the agreement, in which he was represented by two separate law firms, petitioner consented to the purge stipulation which he signed in the presence of two witnesses and a notary public and was released from confinement the same day. Petitioner later appealed the contempt order which the Florida appellate court affirmed without comment. *See Sims v. Schlott*, 22 So. 3d 75 (Fla. Dist. Ct. App. 2009) (table).

A person facing civil contempt sanctions in state court is entitled to an adjudicatory proceeding that meets the fundamental fairness requirements of the due process clause of the Fourteenth Amendment which includes adequate notice and an opportunity to be heard. *See International Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994). The procedural chronology recounted above shows the state courts below satisfied both requirements.

Nevertheless, in a rehash of his state court arguments, petitioner contends that he was denied the opportunity to present evidence to a jury showing, among other things, he entered into the self-dealing transactions in good faith to protect the trusts; the settlor authorized him to self-deal; the money he received from the self-dealing transaction constituted reasonable compensation for his services as trustee;

and that the trial court imprisoned him for contempt "without any evidence that the funds Sims was transferring was anything but his own." Petition for Certiorari at 21. These arguments all lack merit.

Right to Jury Trial. Petitioner's argument he was entitled to a jury trial overlooks the fact that his liability for breach of trust was decided by summary judgment and affirmed on appeal. *See Sims v. Kelly*, 905 So. 2d 128 (Fla. Dist. Ct. App. 2005) (table). It is well settled that a summary judgment does not violate the losing party's right to due process or the losing party's right to a jury trial. *See Fidelity & Deposit Co. of Md. v. United States*, 187 U.S. 315 (1902); *Harris v. Interstate Brands Corp.*, 348 F.3d 761, 762 (8th Cir. 2003). Once the trial court granted summary judgment finding petitioner breached his fiduciary duties, the beneficiaries were entitled under Florida law to trace the ill-gotten gains as a matter of equity and have the trial court enter a money judgment accordingly. *See Rackley v. Matthews*, 141 Fla. 307, 309-10, 193 So. 69, 70 (1940); *Glidden v. Gutelius*, 96 Fla. 834, 842-45, 119 So. 140, 143 (1928). There is no right to jury trial in equitable actions under Florida law. *See Hawkins v. Rellim Inv. Co.*, 92 Fla. 784, 788, 110 So. 350, 351 (1926).

Motive for Self-Dealing. As a matter of state law, it is well settled that when a trustee loans trust funds to himself (or his family or his corporation), a conflict of interest arises regardless of the trustee's motive or intent, absent court approval or the beneficiaries' consent. *See People v. Larkin*, 413 F. Supp. 978, 981

(N.D. Cal. 1976); *In re Kilmer's Will*, 187 Misc. 121, 61 N.Y.S.2d 51 (N.Y. Sur. Ct. 1946); *In re Stowell's Estate*, 595 A.2d 1022, 1025-26 (Me. 1991). When such a conflict of interests exists, the Florida Statutes required court approval for all self-dealing transactions irrespective of the trustee's motive. *See* § 737.403(2), Fla. Stat. (2004) ("If the duty of the trustee and the trustee's individual interest or his or her interest as trustee of another trust conflict in the exercise of a trust power, the power may be exercised only by court authorization. . . ."). Thus, accepting for the sake of argument petitioner's dubious contention that he used trust assets for personal gain in good faith, such self-dealing nevertheless constitutes a breach of trust with attendant liability to the beneficiaries for profits realized from self-dealing.[4]

Settlor's Intent. Petitioner blatantly asserts the settlor of the trusts authorized his self-dealing and complains further he was never allowed by the state courts below "to present evidence as to how Mattie Kelly [the settlor] wished him to manage or invest trust assets. . . ." Petition for Certiorari at 7. Petitioner's contentions are incorrect for at least two reasons.

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[4] Petitioner also contends that as a nonprofessional trustee, he is not held to the same standard of conduct applicable to professional trustees. Florida law, however, holds all trustees to the "prudent man" standard without differentiating between professional and nonprofessional trustees. *See* § 736.0804, Fla. Stat. (2009); *In re Feldstein's Estate*, 292 So. 2d 404, 404 (Fla. Dist. Ct. App. 1974).

First, the Florida trial court determined by summary judgment that petitioner breached his fiduciary duty by improper self-dealing with trust assets based solely on petitioner's deposition and supporting documents. (Petitioner's Appendix I). Although given ample opportunity by court rule,[5] petitioner filed no evidentiary material in opposition to the beneficiaries' motion for summary judgment. Because petitioner's liability was decided by summary judgment and affirmed by the first appeal, the trial judges correctly decided below that the "law of the case" precluded further evidence on the liability issue. Although the appellate court did not write an opinion, "Florida courts have held that an appellate decision that is accompanied only by the statement, 'Affirmed,' is the law of the case." *Pompi v. City of Jacksonville*, 872 So. 2d 931, 932-33 (Fla. Dist. Ct. App. 2004).

Second, the trust instruments themselves describe the types of investments the trustee is authorized to make. As pertinent to this case, the trusts do not authorize the trustee to make loans to himself or his businesses for personal gain or to otherwise self-deal in trust assets. To the contrary, the trusts require the trustee to exercise his powers "only in a fiduciary capacity." Under Florida law, even a trust provision giving the trustee "absolute and uncontrolled discretion" "does not relieve a trustee from the exercise of good faith in the administration of his

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[5] *See* Florida Rule of Civil Procedure 1.510(c).

obligations under the trust agreement." *Hoppe v. Hoppe*, 370 So. 2d 374, 375 (Fla. Dist. Ct. App. 1978), *cert. denied*, 379 So. 2d 206 (Fla. 1979).

Trustee Compensation. Petitioner's suggestion that the ill-gotten profits he realized from self-dealing with trust assets constitute "reasonable compensation" for his services as trustee is meritless. During his tenure as trustee, petitioner earned approximately $1 million in trustee compensation. His argument that the $6 million in profits realized from self-dealing transactions was additional compensation for trustee services borders on the preposterous.

Personal Assets. Although petitioner frequently argued in the courts below, and apparently argues in this Court, that the permanent injunction does not apply to his personal assets, every trial and appellate court judge who has reviewed the injunction has reached the opposite conclusion. Quite clearly, the injunction prevents petitioner "from selling, leasing, transferring, pledging, hypothecating, releasing, gifting, devising, or otherwise relinquishing any control over any asset *owned by Sims individually*." (Petitioner's Appendix I at 49a) (emphasis supplied).

B. Order Striking Pleadings

Notwithstanding petitioner's argument to the contrary, an order striking a party's pleadings entered in accordance with applicable rules of procedure governing discovery in civil cases does not violate due process. *See Hammond Packing Co. v. State of Ark.*,

212 U.S. 322 (1909). Florida Rule of Civil Procedure 1.380(b) authorizes sanctions for a party's failure to comply with an order compelling discovery, including the sanction of striking a party's pleadings. *See Mitchem v. Grubbs*, 485 So. 2d 891, 892 (Fla. Dist. Ct. App. 1986). Although striking a party's pleadings is reserved for "extreme circumstances," "[a] deliberate and contumacious disregard of the court's authority will justify application of this severest of sanctions . . . as will bad faith, willful disregard or gross indifference to an order of the court, or conduct which evinces deliberate callousness." *Mercer v. Raines*, 443 So. 2d 944, 946 (Fla. 1983). "Because of the severity of the sanction, orders striking pleadings should contain specific findings of a willful failure or deliberate refusal to comply with discovery." *Clark v. Lake City Police Dep't*, 723 So. 2d 901, 902-03 (Fla. Dist. Ct. App. 1999). These findings "ensure that the trial judge has consciously determined that the failure was more than a mistake, neglect, or inadvertence, and to assist the reviewing court to the extent the record is susceptible to more than one interpretation." *Ham v. Dunmire*, 891 So. 2d 492, 496 (Fla. 2004).

In this case, petitioner violated an order compelling discovery by providing incomplete and evasive discovery responses. (Petitioner's Appendix D at 17a). This dereliction was not an isolated incident. The trial court's order striking petitioner's pleadings details repeated untimely and evasive discovery responses by petitioner, two failures by petitioner to appear at scheduled depositions, a fraudulent

bankruptcy filing intended by petitioner to halt, not just discovery, but the entire litigation, an order adjudicating petitioner in contempt of court for willfully violating an injunction, numerous motions to compel discovery filed by the beneficiaries and repeated warnings by the trial judge to petitioner that his continued failure to cooperate with discovery would lead to sanctions, including striking his pleadings. (Petitioner's Appendix D at 13a-18a). Based on this extensive history of discovery abuse and bad faith, the trial court determined:

> [T]he Defendant, Paul Sims, has been intentionally vague and non-responsive, both historically and as to this Court's latest Order Compelling Discovery. The Defendant has continued to act in bad faith, failing to respond to legitimate discovery. The Defendant has habitually and wilfully defied Court orders to the point he has been previously jailed for contempt. Based upon review of the case, the Court finds that the Defendant has had no intention to respond to discovery in a good faith way and that specifically the Defendant failed to fully and completely answer the interrogatories and failed to fully respond to the request for production that were the subject of the Court's latest Order Compelling Discovery.

(Petitioner's Appendix D at 18a).

The record belies petitioner's contention that the Florida state courts failed to afford him due process before striking his pleadings. The beneficiaries served

petitioner with a fourth set of interrogatories and fourth request for production on June 7, 2007. (Petitioner's Appendix D at 17a). After petitioner failed to answer the discovery, the beneficiaries served a motion to compel which the trial court heard on October 8, 2007. Petitioner was represented by counsel at the hearing. By order dated October 9, 2007, the court directed petitioner to provide full and complete answers to the discovery by October 22, 2007, failing which "the Court will enter an order striking all of [petitioner's] pleadings." (Petitioner's Appendix D at 18a).

The trial court conducted a hearing on November 19, 2007, to determine whether petitioner had complied with the order compelling discovery. (Petitioner's Appendix D at 18a). Although furnished notice, petitioner did not appear at the hearing either personally or through counsel. Nevertheless, petitioner's subsequently-retained counsel filed an extensive motion for rehearing of the order striking pleadings and, after a new trial judge took over the case, also filed a motion to vacate the predecessor judge's rulings, including the order striking pleadings. The successor trial judge denied rehearing and upheld the predecessor trial judge's order striking pleadings, as well as his other rulings.

Considering the procedural history recounted above, there is no merit to petitioner's argument he was denied notice and an opportunity to be heard on the motion to strike his pleadings. He was forewarned by the trial court of the consequences of his

failure to comply with the order compelling discovery, received a copy of the motion to strike pleadings, received a copy of the notice of hearing and was given a second review of the order by a successor trial judge. Due process requires nothing more.

III. Due process of law did not require the state appellate court to write an opinion stating the reasons it affirmed the final judgment and other orders.

Petitioner urges this Court to accept jurisdiction and hold that due process required the state appellate court to write an opinion in this case explaining its reasons for affirming the final judgment. Due process, however, does not require a written opinion. *See Furman v. United States*, 720 F.2d 263, 264 (2d Cir. 1983) ("There is no requirement in law that a federal appellate court's decision be accompanied by a written opinion."); *United States v. Baynes*, 548 F.2d 481, 482 (3d Cir. 1977). As explained by the Fifth Circuit, a "litigant's right to have all issues fully considered and ruled on by the appellate court does not equate to a right to a full written opinion on every issue raised." *United States v. Garza*, 165 F.3d 312, 314 (5th Cir.), *cert. denied*, 528 U.S. 1006 (1999). *See also Bernklau v. Principi*, 291 F.3d 795, 801 (Fed. Cir. 2002); *Wright v. Secretary for Dep't of Corrections*, 278 F.3d 1245, 1255 (11th Cir. 2002) ("The chief responsibility of judges is to decide the case before them. They may, or may not, attempt to explain the decision in an opinion.").

Further, this Court has never recognized a constitutional requirement for lower courts to articulate reasons for their disposition of cases absent specific court rules or legislation imposing this requirement. *See Harris v. Rivera*, 454 U.S. 339, 344 (1981) ("Although there are occasions when an explanation of the reasons for a decision may be required by the demands of due process, such occasions are the exception rather than the rule.") (footnote omitted); *Arizona v. Washington*, 434 U.S. 497, 517 (1978) ("Review of any trial court decision, is of course, facilitated by findings and by an explanation of the reasons supporting the decision. No matter how desirable such procedural assistance may be, it is not constitutionally mandated in a case such as this."). *See also Taylor v. McKeithen*, 407 U.S. 191, 194 n.4 (1972) ("We, of course, agree that the courts of appeals should have wide latitude in their decisions of whether or how to write opinions. That is especially true with respect to summary affirmances."); *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458, 472 (1981) (Stevens, J., dissenting) ("Judges often decide difficult and important cases without explaining their reasons, and I would not suggest that they thereby commit constitutional error.").

Neither Florida's constitution, statutes, court rules or judicial precedents require the state's five district courts of appeal to write opinions when affirming judgments from the lower tribunals. *See School Bd. of Pinellas County v. District Court of Appeal*, 467 So. 2d 985, 986 (Fla. 1985). Rather, the

decision whether to write an opinion is committed to the sound discretion of the district court of appeal. *See R.J. Reynolds Tobacco Co. v. Kenyon*, 882 So. 2d 986, 989 (Fla. 2004).

In Florida, the district courts of appeal write opinions in all reversals but frequently affirm lower court judgments without opinion when an explanation of the grounds for affirmance will "merely repeat well established principles and further burden attorneys with their research." *Whipple v. State*, 431 So. 2d 1011, 1016 (Fla. Dist. Ct. App. 1983). For example, Florida appellate courts are likely to affirm without opinion when the legal arguments are frivolous, when the alleged error is not preserved, when an error is harmless or when the appeal challenges a discretionary ruling. *See Lowe Inv. Corp. v. Clemente*, 685 So. 2d 84, 85 (Fla. Dist. Ct. App. 1996). A decision from this Court altering this practice and requiring Florida's district courts of appeal to write opinions in every case is not required by due process and would severely strain an already overburdened judicial system.

CONCLUSION

Petitioner has not demonstrated any compelling reasons for the Court to accept jurisdiction. Therefore, the Court should deny the petition for certiorari.

Respectfully submitted,

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In the
Supreme Court of the United States

PAUL SIMS,

Petitioner,

v.

SUSAN K. SCHLOTT, et al. and IMOGENE KELLY, et al.,

Respondents.

On Petition for Writ of Certiorari to the District Court of Appeal First District, State of Florida

PETITIONER'S REPLY BRIEF

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REPLY TO RESPONDENT'S STATEMENT OF THE CASE

Respondents' Statement of the Case argues several points incorrectly:

1. While Respondents correctly list the stated reasons in Trial Judge Swanson's May 2004 Order as to why Judge Swanson removed Petitioner Sims as Trustee and issued the murky "injunction" against Sims, Respondents purposefully fail to include the undisputed fact that, by November 2005, all the accusations against Sims turned out to be incorrect. That is, the business investments Respondents complained of in May 2004 made money for the Trusts. Or, as Respondents prosaically admit in their Statement of the Case, "Although the successor trustees recouped several million dollars [ ]". Thus, holding Sims in contempt in May 2007, was, at best, not "crystal clear."

2. Respondents state at page 3 of their Brief that "the record show that petitioner personally pocketed over six million dollars in profits by self-dealing with trust assets [ ]". This is, at best, a misstatement. The record shows that Respondents filed a summary judgment motion which was granted by Trial Judge Linda Nobles after she ruled that Petitioner could present no evidence on either the issue of damages or the issue of "self-dealing" or evidence on legal defenses to self-dealing. Thus, the record reveals that Sims was held liable after the trial court forced Sims into default. There is no factual record.

Finally, Petition also clarifies for the Court that the "successor trustees" to whom Respondents refer were, in fact, Respondents (the beneficiaries of the Trusts) own attorneys. This troubling fact, i.e., where the beneficiaries of a trust also direct the trust there is no trust, will factor importantly into the appellate arguments should the Court decide to grant the petition.

ARGUMENT

I. The Okaloosa County Circuit Court's Judgments, and Florida's First District Court of Appeal failure to explain its affirmation of those confusing and contradictory orders, raise important federal questions.

Respondents cite *Michigan v. Long*, 463 U.S. 1032 (1983) to support their argument that Petitioner presents no federal question. However, this Court, in *Michigan* said: "If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision." *Id.* at 1041.

Thus, this Court respects state appellate courts when those courts fulfill their duties to tell citizens what the law is. However, this Court also pointed out in *Michigan* that "it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action." *Id.*, quoting *Minnesota v. National Tea Co.*, 309 U.S. 551, 557 (1940).

A case more applicable to Petitioner's case is *Bunkley v. Florida*, 538 U.S. 835, 841-842 (2003) where this Court reviewed a Florida Supreme Court decision that never asked whether the Florida weapons statute had "evolved" by 1989 to such an extent that Bunkley's 2 ½ - to 3 inch pocketknife fit within the "common pocketknife" exception. This Court remanded the case to the Florida Supreme Court with instructions that it should consider whether Bunkley's pocketknife of 2 ½ to 3 inches fit within §790.001(13)'s "common pocketknife" exception at the time his conviction became final. *Id.* at 841-842.

Here, Petitioner asks the Court to consider whether the United States Constitutions Bill of Rights allows Florida trial courts to incarcerate people for civil contempt without determining whether or not the individual has the ability to purge himself of the contempt.

Equally important, Petition believes that the United States Constitution's Bill of Rights requires state and federal courts to tell citizens what the law is and to resist deciding what the rules are after the fact.

For example, when Judge Bell struck Petitioner's pleadings on December 3, 2007, Judge Bell stated that "No further pleadings or evidence shall be allowed by or on behalf of the Defendant as to matters that were the subject of the Plaintiff's Motion to Compel and this Court's Order Compelling Discovery date October 9, 2007." Petitioner's Appendix D at 19a. Those matters were the claimed six million dollars of alleged profits. Yet, when Petitioner attempted to present evidence showing that he did not self-deal or, in the alternative,

that he was not personally liable for self-dealing (because of the legal defenses cited in the Petition), Judge Nobles unlawfully expanded Judge Bell's ruling to prohibit any evidence whatsoever of any type on any issue. *See*, Petitioner's Appendix C.

As in *Bunkley*, Petitioner argues that Florida courts are constitutionally compelled to consider whether or not Florida trial judges can decide what the "law of the case" is as it suits them to avoid dealing with time-consuming and complex cases.

In *Barney v. Saunders*, 57 U.S. 535, 539 (1853) this Court recognized that if trustees acted in good faith, exercised a sound discretion, used ordinary care and diligence, acted under the advice of counsel, and were actuated by a sincere desire to promote the interest of the trust estate, trustees are not to be charged with the losses. That is, trustees are only personally liable in cases of clear negligence, perversion of the trust, or willful default. Here, Trial Judge Swanson removed Sims in May 2004 because he found Sims to have wrongfully risked Trust assets in speculative investments. Later, those investments turned out not to be speculative and the Trust incurred no loss. Yet, the trial judges acted as if nothing had changed.

Florida law is the same as set out in *Barney*. In *Griffin v. Griffin*, 463 So.2d 569, 574-575 (Fla. 1st DCA 1985) the trust vested "absolute discretion" in the trustee. The court found that payments made by the trustee were erroneous, but Florida's First DCA also held that the trustee's actions did not rise to the level of **"willful negligence or gross unfaithfulness to [the] trust,"** that would require the trustees to

account to the beneficiaries personally for sums expended. (emphasis added).

Here, by November 2005 Respondents had admitted that the Trust had reaped substantial income from Sims' alleged risky investments. Yet, all the trial judges and the First DCA ignored Sims' pleas to let him prove that he acted in good faith, under the advice of counsel, according to what Mattie Kelly wanted, and that he was not willfully negligent or grossly unfaithful.

If this Court should grant certiorari, Petitioner will ask the Court to overturn the judgments ordering his incarceration and confiscating all property. Petitioner will also contend that all of the judgments after his wrongful incarceration must be set aside because the wrongful incarceration tainted the remainder of the proceedings in the lawsuit. From Petitioner's wrongful incarceration to the present, the Florida courts have violated Petitioner's right to due process of law.

In most, if not all, jurisdictions, a trustee is not prohibited from personal gain in a transactions if there was: a) no self-dealing; b) the self-dealing was authorized by the Settlor; c) the self-dealing was by a non-professional trustee who entered into the transactions in good faith and where the beneficiaries were not harmed; or d) where the beneficiaries consented. See, e.g., *Heyman v. Heyman*, 33 N.Y.S.2d 235, 241-244 (N.Y. Sup. Ct. 1942) for the long-established rule of law that authority for a trustee to deal with his own firm and earn a normal profit is not necessarily inconsistent with the existence of a trust relationship; §736.0806 Fla. Stat. which allows a trustee who has special skills or expertise to use those

special skills or expertise; and §736.1011 Fla. Stat. which allows a trustee to prove that an exculpatory clause, such as the one that Mattie Kelly executed when she set up her trusts, is fair under the circumstances.

Again, Paul Sims had no opportunity to prove what Mattie Kelly wanted and, yes, Paul Sims blatantly asserts that Mattie Kelly appointed Paul Sims and only Paul Sims to execute the business of the Trusts.

II. Trial Judge Bell did not care that Sims did not have the ability to purge himself of the civil contempt.

At page nine of Respondents' Brief, Respondents state casually: "Apparently unwilling to satisfy the purge amount, petitioner was incarcerated on May 30, 2007." In fact, as cited in the Petition, the record shows that Sims did everything he could do to avoid going to jail, but what he could not do was get the money back from Ravelo.

In fact, Trial Judge Bell well-recognized the uncertainty of the situation when he said at the May 17, 2007 where he adjudged Sims in contempt and engaged Sims and his attorneys in a discussion about raising $1.5 million while ignoring the fact that Ravelo would not give back the money Sims had sent him:

> THE COURT: Yeah, I don't want to -- I don't necessarily want to force somebody to liquidate some real estate **when the final result is really up in the air,** but as long as it's a lien, and if **they [the Kelly beneficiaries] prevail, they can get it,** subject to the mortgage, of

> course, but there's nothing you can do about that anyway. I mean, it's mortgaged. [emphasis added]

After Sims spend some two months in the county jail, Trial Judge Bell finally relented and allowed Sims to put up everything he owned to purge the contempt which was far less than the $1.5 million Sims had sent to Ravelo in southern Florida. *See*, Petitioner's Appendix E, Order Providing Purge and Release.

Respondents make much of Sims' scheme to take his affairs into Federal bankruptcy court, which is a lawful haven for persons hounded by creditors and lawsuits to seek relief. Had Sims stuck with his bankruptcy, this case might have had a much different outcome. Unfortunately, Ravelo was a crook [as is evidenced by the supplementary proceedings in the Okaloosa County Circuit Court where Sims has willingly testified in support of the beneficiaries efforts to prosecute Sims' third party petition against Ravelo]. As the trial attorneys for Respondents argued in their June 15, 2010 brief supporting Sims' third-party complaint against Ravelo:

> A large part of the problem [not obtaining a credible accounting from Ravelo on the funds Sims transferred to Ravelo and/or his companies] was created by Ravelo commingling his own monies with those received from Sims and Sims entities, and spending from the Atlantis Mariner [a Ravelo company] account on behalf of himself, his (Ravelo's) entities, and for Sims [citation to transcript is omitted]. Sims repeatedly testified the monies were to be

> placed in a separate account [citation to transcript is omitted], but this was never done.

As to Sims withdrawing his bankruptcy filing, as Respondents agree, the bankruptcy judge made no findings in the case other than allowing Sims to withdraw the petition. That Respondents cite themselves in support of their argument that Sims attempt at bankruptcy was unlawful belies what the federal bankruptcy law allows.

Trial Judge Bell denied Sims due process and subjected Sims to a cruel and unusual punishment when Judge Bell sent Sims to jail knowing that was unable, despite his best efforts, to raise $1.5 million. That Judge Bell settled two and a half months later for the same Sims property he could have gotten on May 30, 2007 is material evidence of Judge Bell's unlawful Order of Contempt.

III. Review by this Court is necessary to remind State courts – and Florida in particular – that state courts are not free to ignore their own laws and state appellate courts are not to be apologists for trial courts, but, in fact, are to act as a check and balance.

On June 11, 2008, Sims asked Trial Judge Linda Nobles to consider a pretrial order that would have allowed a full jury trial on the record, with the Court reserving its equitable and procedural rulings for post-trial consideration. Florida law dictates that where issues involved in an action are both legal and equitable in nature, the legal issues require resolution

by a jury. *Yer Girl Tera Mia v. Wimberly*, 962 So.2d 993, 996 (Fla. 5th DCA 2007).

Here, like most jurisdictions, Florida trust law is a mixture of law and equity. Here, Respondents filed two separate complaints against Sims and then consolidated those complaints. One complaint asked for equitable relief and the other complaint asked for legal relief and a trial by jury. Should this Court grant certiorari, Sims contends that the record will show a consistent pattern on the part of circuit court judges Bell and Nobles to find the quickest way to end the case regardless of the legal or equitable relief sought and regardless of the legal and equitable defenses that Sims would have proven at trial.

Petitioner agrees with Respondents' citation to *R.J. Reynolds Tobacco Co. v. Kenyon*, 882 So.2d 986, 989 (Fla. 2004) that writing an opinion is committed to the sound discretion of the district court of appeal. Here, Sims contends that "sound discretion" does not equate to "absolute discretion."

Most recently, this Court reversed the conspiracy convictions for Jeffrey Skilling of Enron fame. *Skilling v. United States*, 08-1394, 2010 WL 2518587 (U.S. 2010). Justice Scalia's concurring opinion (joined by Justices Thomas and Kennedy) confirmed that vague statutes that fail to provide a person of ordinary intelligence with fair notice of what is prohibited violate due process of law. Here, Florida trust law allows exceptions and makes special provision for those trustees who act in good faith, under advice of counsel, etc. Yet, whether it was putting Sims in jail or whether it was confiscating all of his property or whether it was denying Sims the opportunity to prove

good faith, advice of counsel, settlor's intent, etc., the Florida trial and appellate courts simply ignored the law.

The troubling aspects of Florida's constitution that essentially makes this Court the court of last resort for Florida citizens (when a district court of appeal deigns to write an opinion) may, in some instances, not withstand federal scrutiny. Here, Sims contends that his case is an excellent vehicle for this Court to review the duties of appellate courts to write opinions in cases that are demonstrably complex.

Indeed, without the check and balance of the United States Constitution to guide state courts, this country's citizens would not be free to enjoy the liberties we do. As we have seen over and over again in this country and all others, unfettered discretion leads to oppression. Those in power find it easy to forget they are there only by consent of those they govern.

The smattering of the record before this Court shows that Paul Sims, even in old age, is not a man standing in awe of the mighty power of the Florida courts. This grit served this country and Sims well in World War II when Sims flew with the Burma Bridge Busters. Here, Sims will not argue that he is without blemish, but he will argue that whatever he is or whatever he did in the course of the never-ending litigation with his one-time step-children, he had a right to his day in court and to be judged on the merits of what he did to fulfill the wishes of Mattie Kelly.

Petitioner's counsel is reminded of the exchange between Sir Thomas More and More's son-in-law,

William Roper, in the movie A MAN FOR ALL SEASONS. More and Roper are discussing More's predicament and Roper's impassioned belief that the King's actions were the work of the Devil. More cites to the law and cautions Roper about his zeal:

> **Roper**: So, now you give the Devil the benefit of law!
>
> **Sir Thomas More**: Yes! What would you do? Cut a great road through the law to get after the Devil?
>
> **Roper**: Yes, I'd cut down every law in England to do that!
>
> **More**: Oh? And when the last law was down, and the Devil turned 'round on you, where would you hide, Roper, the laws all being flat? This country is planted thick with laws, from coast to coast, Man's laws, not God's! And if you cut them down, and you're just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake!

Paul Sims seeks the benefit of the law and maintains that the United States Constitution protects even disagreeable old men.

Here, the Trust lost no money as the result of Sims' investments; yet, the Florida courts put Sims in jail and forced him to forfeit everything he owned. The trial court struck his pleadings as to damages, decided later that it had struck his pleadings as to all issues,

and not until August 2008 decided what the law of the case was and that the law of the case meant that Sims was personally liable for six million dollars in income that he denies making. Then, the trial court told Sims he could not present evidence as to any issue and that he actually had been adjudged personally liable in May 2004.

Then, Florida's First District Court of Appeal approved every conflicted trial court action but decided not to let Petitioner Sims in on the reasons why.

CONCLUSION

For the foregoing reasons and those stated in the Petition, Petitioner respectfully submits that his Petition for a Writ of Certiorari should be granted.

Dated: June 30, 2010

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